COBBETT'S

COMPLETE COLLECTION

OF

State Trials.

VOL. IX.

COBBETT'S

COMPLETE COLLECTION

OF

State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER CRIMES AND MISDEMEANORS

FROM THE

EARLIEST PERIOD TO THE PRESENT TIME.

VOL. IX.

COMPRISING THE PERIOD

FROM THE THIRTY-FOURTH YEAR OF THE REIGN OF KING CHARLES THE SECOND, A. D. 1682, TO THE THIRTY-SIXTH YEAR OF THE SAID REIGN, A. D. 1684.

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1811.

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VOLUME IX.

STATE TRIALS IN THE REIGN OF KING CHARLES THE SECOND.

*** *The new Articles are marked* [N.]

COBBETT'S

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COMPLETE COLLECTION
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State Trials



89. The Trial of GEORGE BOROSKY alias BORATZI, CHRISTOPHER VRATZ, JOHN STERN, and CHARLES JOHN Count CONINGSMARK, at the Old-Bailey, for the Murder of Thomas Thynn,* esq. 34 CHARLES II. A. D. 1682.

THERE having been an Indictment foun at Hicks's hall by the grand-jury for the coun ty of Middlesex against Charles-George Bo rosky, Christopher Vratz, and John Stern, fo murdering Thomas Thynn, esq.; and agains Charles John Count Coningsmark, as accessary before the fact, the said persons being in Newgate, were brought to the bar to be arraigned and tried: And they being foreigners, an interpreter was sworn to acquaint them, in a

* The Issachar of "Absalom and Achitophel," in which poem, Dryden, describing th respect and favour with which Monmouth wa received upon his progress in the year 1681 says,

—— "hospitable treats did most commend
"Wise Issachar, his wealthy Western friend.'

Sir John Reresby, in his Memoirs, p. 135, relates the following particulars of this business:

"At this time was perpetrated the most barbarous and audacious murder that had almost ever been heard-of in England. Mr. Thynn, a gentleman of 9,000*l.* per ann. and lately married to lady Ogle, (who, repenting herself of the match, fled from him into Holland before they were bedded), was set upon by three ruffians, who shot him as he was going along the street in his coach. This unhappy gentleman being much engaged in the duke of Monmouth's cause, it was feared that party might put some violent construction on this accident, the actors therein making their escape just for the time, and being unknown. I happened to be at court that evening, when the king, hearing the news, seemed greatly concerned at it, not only for the horror of the action itself, (which was shocking to his natural disposition) but also for fear the turn the anti-court party might give thereto. I left the court, and was just stepping into bed, when Mr. Thynn's gentleman came to me to grant him an Hue and Cry, and immediately at his heels comes the duke of Monmouth's page, to desire me to come to him at Mr. Thynn's lodging, sending his coach for me, which I made use of accordingly. I there found his grace surrounded with several lords and gentlemen, Mr. Thynn's friends, and Mr. Thynn himself mortally wounded with five shot from a blunderbuss. I on the spot granted several warrants against persons suspected to have had a hand therein, and that night got some intelligence concerning the actors themselves. At length, by the information of a chairman, who had carried one of the ruffians from his lodging at Westminster to the Black Bull, there to take horse, and by means of a loose woman, who used to visit the same person, the constables found out the place of his abode, and there took his man, by nation a Swede, who being brought before me, confessed himself a servant to a German captain, who had told him he had a quarrel with Mr. Thynn, and had often ordered him to watch his coach; and that particularly that day the captain no sooner understood the coach to be gone by, than he booted himself, and with two others, a Swedish lieutenant and a Pole, went on horseback, as he supposed in quest of Mr. Thynn. By the same servant I also understood where possibly the captain and his two companions were to be found; and having with the duke of Monmouth, lord Mordaunt and others, searched several houses, as he directed us, till six in the morning, and having been in close pursuit all night, I personally took the captain in the house of a Swedish doctor in Leicester-fields. I went first into his room, followed by lord Mordaunt,

language they understood what they were accused of.

Clerk of the Crown. Charles Borosky, hold up thy hand. (Which he did.) Christopher Vratz, hold up thy hand. (Which he did.) John Stern, hold up thy hand. (Which he did.) Charles John Coningsmark, hold up thy hand. (Which he did.)

"You stand indicted in the county of Middlesex by the names of Charles George Borosky, late of the parish of St. Martin's in the Fields, in the county of Middlesex, labourer; otherwise called George Boratzi, of the same parish and county, labourer; Christopher Vratz of the same parish and county, gentleman; John Stern of the same parish and county, gentleman; and Charles John Coningsmark, of the same parish and county, esq.; otherwise called John Coningsmark, of the same parish and county, esq.: For that

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where I found him in bed, with his sword at some distance from him on the table; his weapon I in the first place secured, and then his person, committing him to two constables. I wondered he should make so tame a submission; for he was certainly a man of great courage, and appeared quite unconcerned from the very beginning, though he was very certain he should be found the chief actor in the tragedy. This gentleman had, not long before, commanded the forlorn hope, at the siege at Mons, when but two, besides himself, of 50 under his command, escaped with life; and, in consideration of this service, the prince of Orange made him a lieutenant of his Guards, and, in reward for the same, the king of Sweden gave him a troop of horse: but, to insist no farther on this, his two accomplices also were taken, and brought to my house; where, before I could finish the several examinations I had to go through, the king sent for me to attend him in council, for that purpose, with the prisoners and papers. His majesty ordered me to give him an account of the proceedings hitherto, as well with regard to the apprehending of the prisoners, as their examination, and then examined them himself; and when the council rose, ordered me to put every thing into writing, and in form, against the trial; which took me up a great part of the day, though I had got one of the clerks of the council, and another justice of the peace to assist me, both for the sake of dispatch and my own security, the nicety of the affair requiring it, as will, in the sequel, appear.

"The council met again, among other things, to examine the governor of young count Coningsmark, a young gentleman then in Mr. Foubert's academy in London, and supposed to be privy to the murder. Upon this occasion, the king sent for me, to attend in council, where the said governor confessing, That the eldest count Coningsmark, (who had been in England some months before, and made his addresses to the lady who so unfortunately married Mr. Thynn) arrived *incognito* ten days before the said murder, and lay disguised till it was committed, gave great cause to suspect that the count was at the bottom of this bloody affair; and his majesty ordered me thereupon to go and search his lodgings, which I did with two constables, but the bird was flown; he went away betimes in the morning of the day after the deed was perpetrated; of which I immediately gave the king an account.

"Several times afterwards attended on the king, both in private and in council, from time to time to give him information, as fresh matter occurred, or appeared; and upon the whole it was discovered, partly by the confession of the parties concerned, and partly by the information of others, that the German captain had been for eight years an intimate with count Coningsmark, one of the greatest men in the kingdom of Sweden, his uncle being at that time governor of Pomerania, and near upon marrying the king's aunt; and moreover that during the time he was in England before, he had made his addresses to lady Ogle, the only daughter and heiress of the earl of Northumberland, who had been married to the deceased Mr. Thynn, and that the said count had resented something as an affront from Mr. Thynn: That the captain, moved thereto out of pure friendship to the count, (though not at all with his privity, as pretended,) had determined within himself to revenge his cause, and that in consequence of such his resolution the murder happened: It appeared also that such his cruel design was furthered by the assistance of the Swedish lieutenant, and the Pole, who had been by him obliged to discharge the blunderbuss into the coach. I was extremely glad that in this whole business there was no English person directly or indirectly concerned; for the fanatics had buzzed it about that the design was chiefly against the duke of Monmouth; so that I had the king's thanks more than once, the thanks of my lord Hallifax and several others, for my diligence in tracing-out the true springs and motives of this horrid action, as well as the actors themselves. The duke of Monmouth had been out of the coach above an hour; and, by the confession of the criminals, I found they were not to have made the attempt if his grace had been with Mr. Thynn.

"Mean while it was suspected that count Coningsmark was still in the kingdom; and search being made after him, he was met with alone in disguise at Gravesend, by a servant of the duke of Monmouth's just as he was stepping out of a sculler, intending the very next day to embark on board of a Swedish ship. Being brought up to town, the king immediately called an extraordinary council to examine him. I was present upon this occasion, and observed that he appeared before the king with all the assurance imaginable. He was a fine person of a man, and I think his hair was the longest I ever saw. He was very

you the said Charles George Borosky alias Boratzi, Christopher Vratz, and John Stern, not having God before your eyes, but being moved and seduced by the instigation of the devil, upon the 12th day of February, in the 34th year of the reign of our sovereign lord king Charles the second, with force and arms in the parish of St. Martin's in the Fields in the county of Middlesex aforesaid, in and upon Thomas Thynn, esq.; in the peace of God, and our said sovereign lord the king, then and there being, feloniously, wilfully, and of your malice aforethought, did make an assault. And that thou the said George Borosky alias Boratzi, a certain blunderbuss of the value of five shillings, the said blunderbuss being then charged with gunpowder, and four leaden bullets; which said blunderbuss thou the said George Borosky alias Boratzi in both thy hands so as aforesaid, loaden to and against the said Thomas Thynn then and there hadst and heldest. And that thou the aforesaid George Borosky alias Boratzi, knowing the blunderbuss aforesaid, to be so as aforesaid, charged with gunpowder and leaden bullets, to and against the said Thomas Thynn then and there, with force of arms, feloniously, wilfully, and of thy malice aforethought, didst discharge and shoot off. And that thou the said George Borosky alias Boratzi, with the said leaden bullets shot and sent out of the blunderbuss aforesaid, by the violence and force of the gunpowder aforesaid: And by thee the said George Borosky alias Boratzi so as aforesaid discharged and shot off, the said Thomas Thynn in and upon the right-side of the body of the said Thomas Thynn, near the short ribbs of the right side of the body of the said Thomas Thynn, then and there feloniously, wilfully, and of thy malice aforethought didst strike and wound; giving unto him the the said Thomas Thynn then and there with the leaden bullets aforesaid, so as aforesaid shot and sent out of the blunderbuss aforesaid by force and violence of the gunpowder aforesaid, by thee the said George Borosky alias Boratzi, so as aforesaid discharged and sent out, in and upon the right side of the body of him the said Thomas Thynn, near the short ribs, on the right side of him the said Thomas Thynn four mortal wounds, every one of them of the breadth of one inch, and of the depth of six inches; of which said mortal wounds, he

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quick of parts; but his examination was very superficial, for which reason he was by the king and council ordered to be, the same day, examined by the lord chief justice, the attorney general, and myself; but he confessed nothing of the murder, pretending the reason why he lay at this time concealed, to be that he was then under cure for a small venereal disaster, and did not care to appear in public, till the course of his prescription was over; and that his going away in disguise after the fact was committed, was by the advice of friends, who told him it would reflect on him should it be known he was in England, when an intimate of his laboured under so violent a suspicion of having committed so black a deed; and that he endeavoured to make his escape, not knowing how far the laws of this land might, for that very reason, involve him in the guilt. But, being at the king's couchee the night after, I perceived by his majesty's discourse that he was willing the count should get off.

"A few days afterwards, Mons. Foubert who kept the academy in London, came and desired me to put him in a way how to save count Coningsmark's life, insinuating to me, that, as he was a man of vast fortune, he could not make a better use of it than to support his own innocence, and shield himself from the edge of the law, in a strange country. I told him, that if the count was really innocent, the law would naturally acquit him, as much, though a foreigner, as if he was a native; but that he ought to be cautious how he made any offers to pervert justice; for that it were to make all men of honour his enemies, instead of gaining them to be his friends. This was one of the first bribes of value ever offered to me, which I might have accepted without any danger of discovery, and without doing much for it But my opinion has always been that what is so acquired is no addition to our store, but rather the cause of its waste, according to the saying, 'Male parta male dilabuntur;' I therefore rejected this now, as I had done others before, and as I hope I shall always do for the time to come.

"Bills being found at Hick's hall against the three murderers of Mr. Thynn, as principal. and against the count as accessary; they the next day made their appearance at the Old Bailey, where after a trial which lasted from nine in the morning to five in the afternoon, and a very vigorous prosecution on the part of Mr. Thynn's relations, the three were brought in guilty as principals, and the count by the same jury acquitted as not accessary; it being 'per medietatem Linguæ,' according to the privilege of strangers. I was the first that carried the news of this to the king, who seemed to be not at all displeased at it; but the duke of Monmouth's party, (who all appeared to add weight to the prosecution,) were extremely dissatisfied that the count had so escaped.

"The captain, and the other two his accomplices in the murder of Mr. Thynn, were, pursuant to their sentence, hanged in the street where they had perpetrated the crime. The captain died without any the least symptom of fear, or offering at the least glance of reflection on count Coningsmark; and seeing me in my coach as he passed by in the cart, he made a bow to me with the most steady countenance, as he did to several of the spectators he knew, before he was turned off; in short, his whole carriage, from the first moment he was apprehended, to the last that he resigned his breath, savoured much of gallantry, but not at all of religion."

the said Thomas Thynn from the said 12th day of February in the 34th year aforesaid, unto the 13th day of the same month of February, at the parish of St. Martin's in the Fields aforesaid, did languish and lived languishing: On which said 13th day of February, in 34th year aforesaid, he the said Thomas Thynn at the parish of St. Martin's in the Fields aforesaid, of the mortal wounds so as aforesaid given, died. And that you the said Christopher Vratz and John Stern, then, that is to say at the time of the felony and murder aforesaid, by the said George Borosky alias Boratzi; so as aforesaid feloniously, wilfully, and of malice aforethought, done and committed, then and there feloniously, wilfully, and of your malice aforethought, by force and arms were present, aiding, comforting, abetting, assisting and maintaining the said George Borosky alias Boratzi, the felony and murder aforesaid feloniously, wilfully, and of his malice aforethought, to do and commit. And so you the said George Borosky, alias Boratzi, Christopher Vratz and John Stern, the said Thomas Thynn in manner and form aforesaid, feloniously, wilfully, and of your malice aforethought didst kill and murder, against the peace of our sovereign lord the king, his crown and dignity: And that thou the said Charles John Coningsmark before the felony and murder aforefaid, by the said George Borosky alias Boratzi, Christopher Vratz and John Stern in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, done and committed, to wit, the said 12th day of February, in the 34th year aforesaid, at the parish of St. Martin's in the Fields aforesaid, them the said George Borosky alias Boratzi, Christopher Vratz and John Stern the felony and murder aforesaid, in manner and form aforesaid feloniously, to do and commit, feloniously, wilfully, and of thy malice aforethought, didst stir up, counsel, persuade and procure against the peace of our sovereign lord the king, his crown and dignity."

L. C. J. (Sir Francis Pemberton.) Why you must read this to them now in their language, or else they cannot understand it.

L. C. J. North. You that are the interpreter, tell them that you are going to interpret the indictment to them by degrees.

Mr. *Vandore.* Yes, my lord, I will.

L. C. J. Do not read all the circumstantials, but only the substance of the indictment.

Then the Clerk of the Crown went near the bar, and dictated to the Interpreter deliberately, who interpreted it to the prisoners.

L. C. J. Well, you have told them the substance of it; that they are indicted for killing Mr. Thynn.—Mr. *Vandore.* Yes.

L. C. J. Well, what says the first man?

Cl. of Cr. I asked him if he be Guilty of the murder whereof he stands indicted, and he says he is Not Guilty.

L. C. J. Does he say so?

Mr. *Vandore.* Yes, he says he is Not Guilty.

L. C. J. Why now tell him the formality, that he must put himself upon the jury here.

[Then Sir *Nathanael Johnson* was sworn Interpreter.]

L. C. J. Ask him this question. Tell him he is accused of the murder of Mr. Thomas Thynn; ask him if he be Guilty or Not Guilty.

Vandore. He says he is Not Guilty, my Lord. I asked him just now.

L. C. J. Then sir Nathanael Johnson, if you can make him to understand it, tell him that our manner of trial here is by twelve men, and that is by putting himself upon the country, and therefore ask him, how he will be tried. Tell him that the method is by saying, 'By God and 'the Country.'

Sir *N. Johnson.* My Lord, he is a very dull kind of man, he knows not how to answer, nor what to say; not won't say any thing; that is the truth of it.

L. C. J. Ask him if he be willing to be tried after the manner of the English.

Sir *N. Johnson.* Yes, he says he is willing to be tried according to the fashion of the English.

L. C. J. North. He hath pleaded Not Guilty, and the other follows of course.

L. C. J. Ask the other, the captain, the same thing.

Sir *N. J.* He desires a French Interpreter, for he speaks French.

L. C. J. Surely here are enough people that understand French, but ask him if he does not understand English.

Sir *N. J.* He can understand some, he says.

L. C. J. Then ask him, whether he be Guilty or Not.

Sir *N. J.* He says he is Not Guilty, my Lord.

L. C. J. Now ask Mr. Stern, but first ask the captain how he will be tried.

Sir *N. J.* He says he will be tried by God, and half his own country and half English.

L. C. J. He shall have his request.

Sir *N. J.* He desires one thing further.

L. C. J. Look you, sir N. Johnson, you must tell him this; he shall be tried by half foreigners and half English; that is it, I suppose he desires.

Sir *N. J.* My Lord, he desires that there may be none of the jury that are any thing a kindred or relation to Mr. Thomas Thynn, nor any particular friend of his, and he is satisfied.

L. C. J. No, there shall not, we will take care of that. Now ask Mr. Stern then the like question.

Sir *N. J.* My Lord, he says he is Not Guilty.

L. C. J. Ask him too, how he will be tried; whether by a jury?

Sir *N. J.* He says, he is content to be tried as the others are, by half strangers and half English.

L. C. J. Now then ask my lord Coningsmark what he says.

Mr. *Thynn*. He speaks English, my Lord.

L. C. J. But not well enough, may be, to understand the whole.

L. C. J. North. Sir Nathanael, what does he say?

Sir *N. J.* My Lord, he says it is a concern of his life, and therefore he desires he may have not only one Interpreter, but others: he desires he may have two or three, that they may make no mistake.

L. C J. Very well

Sir *N. J.* He says that I understand the Dutch language; but his life and honour are concerned, and therefore he would have three or four.

L. C. J. Who would he have?

Sir *N. J.* Sir Thomas Thynn* said they had one that was brought by them.

Mr. *Thynn*. That is Vandore, who is sworn already.

L. C. J. Look you sir Nathanael, tell my Lord if he pleases, he shall have a French Interpreter; for I know he speaks that language very well.

Sir *N. J.* My Lord, he says, that High-Dutch is his natural language, and he can express himself best in that.

[Then one *Vanbaring* was called for by the Count, but did not appear.]

L. Ch. Bar. (Wm. Montague, esq.) Sir N. Johnson, you must ask the Count whether he be Guilty of the Indictment, as accessory before the fact.

Sir *N. J.* I have asked, my lord, and Not Guilty he answers.

Cl. of Cr. How will you be tried?

Sir *N. J.* He says he will be tried by God and half his own country, or half foreigners and half English; † and he desires they may be persons of some quality, as they use to treat persons of his quality, and strangers.

L. C. J. There shall be such strangers, tell him. You have merchants of good account, I suppose, upon this pannel?

Und. Sher. Yes, my Lord, they are all such.

Sir *N. J.* He desires he may be tried distinctly from the others.

L. C. J. That cannot be: but look you, Sir, Pray tell my Lord this, that though the evidence must be given, and the jury must be charged all together, yet in this case we will distinguish his case to the jury, if there be occasion.

L. C. Bar. And his evidence will come distinct.

Mr. *Vandore*. My Lord, he asks this question of your lordship and this honourable court, if it be agreeable, and according to the justice of this nation, that my Lord may be allowed two or three days delay, because he is to prepare himself and witnesses for his trial.

Sir *N. J.* My Lord, he says this; his witnesses are not prepared, and he not having had time to recollect himself, so as to fit himself for his defence, therefore he begs the favour of the court, that he may have a day or two's time to recollect himself. He says he is to answer circumstances with circumstances, my Lord; he says he has some witnesses as to circumstances that are very material to answer such circumstances as are brought against him; he does not understand the law, my lord, nor has had no time to have any counsel to inform himself.

L. C. J. You must tell him this, that which he is charged with is matter of fact, that none can instruct him in but himself; counsel can do him no good in such a case as this.*

Sir *N. J.* My lord, he says, the matters that are objected against him are only circumstances, my lord, and they require an answer, which he can do by other circumstances, and he desires time to recollect himself two or three days respite; he desires, if it were but a little time, a day or two.

Mr. *Thynn*. My lord, our witnesses are all ready, and the counsel instructed, and wait here to go on.

L. C. J. North. Look you; pray will you tell him, when the trial is once begun, the jury can neither eat nor drink till they have given their verdict; that is the law, and we cannot change the law, therefore we cannot allow him the time he desires. He knows what he is accused of, and has known it a good while, and has had time to recollect himself and prepare himself.

Sir *N. J.* My lord, he says, the jury are not yet together, nor charged with him, and therefore till the jury are charged, he thinks he may have time, if your lordship please to allow it.

L. C. J. Look you, you must tell him, that he is to understand that here is but one indictment against the principals and himself, and we cannot try this by piece-meals; we cannot try the principals now, and my lord Coningsmark another time.†

* So in the former edition.

† As to the right of an alien to have in trials whether civil (unless both parties be aliens) or criminal (except indeed for treasons and in the case of Egyptians, under st. 22 H. 8, c. 10.) in which he is a party, a jury of which one half shall be aliens (if so many shall be forth-coming in the place). See the Statutes, 28 Ed. 3, c. 13, and 8 Hen. 6, c. 29, and Blackst. Comm. Book 3, ch. 23, Book 4, ch. 27.

* See the Note to the Case of Don Pantaleon Sa, vol. 5, p. 566, and to the Case of Twyn, vol. 6, p. 516, of this Collection.

† "Most certainly they might, and it is frequently done although there be but one indictment, as in the case of the Regicides and many other cases; but it was more for the interest of the count to try him then, though he was not aware of it himself." Former Edition. As to an inconvenience attending the trial of more than one prisoner at once, see a note to the Case of Campion and others, vol. 1, p. 1051, and a note to the Case of Coke and Woodburne, A. D. 1721, in this Collection.

Sir *N. J.* If it must be so, he says, he must throw himself upon your lordship: he hopes he shall have nothing but what is just and fair, and he hopes your lordship will be of counsel to him, as the fashion of this country is; if any thing arises of matter of law, he desires he may have the advantage of it: and if he cannot have a day or two, he says the innocency of his case will protect him. Count Coningsmark knowing how innocent he is, won't stick for a day or two, but he will be ready to be tried as your lordship shall think fit: he has innocence on his side and that will protect him.

L. C. J. Let my lord know, that we will be careful in examining all things that concern him.

Sir *N. J.* He says he does not fear it, my lord, having to do with such honourable persons, nor doubt it at all.

L. C. J. Then swear a jury. But look you my lord Coningsmark, consider this; as the gentlemen of the jury come to be sworn, if you do dislike any of them, you may except against them.

Sir *N. J.* My lord, he says, being altogether a stranger here in England, and not knowing any of the persons, he begs the favour of the bench that he may have the names of those that are returned of the jury, and a little time to consider of it.

L. C. J. That we cannot do: all we can do for you is, we will take as much care as we can, that you may have indifferent persons and persons of quality.

L. C. J. North. Pray tell him, the law gives him the privilege of a peremptory challenge.

Sir *N. J.* He says, my lord, he does not know who they are, but they may be persons that are touched, and may have something of evil will or spleen against him. His father served against the king of Denmark and against the Poles and the Papists, and his father was a Protestant and served the Protestant cause.

L. C. J. What countrymen are they, Mr. Sheriff?

Under Sheriff. They are French and Dutch most of them, I do not believe there is ever a Dane amongst them.

L. C. J. We will call all Frenchmen, if he had rather have them than Dutch.

Sir *N. J.* He would very gladly have them all High-Dutch; if not, that he may have some.

L. C. J. I thought he had excepted against the Dutch.

Sir *N. J.* No, against the Danes; for his father in the wars burnt their towns.

L. C. J. Examine them, as they come to the book, if there be any of the Roman Catholic religion, and do not let any such be sworn.

Mr. Sheriff *Pilkington.* There is none such among them, I dare say.

L. C. J. Sir N. Johnson, tell my lord, he shall have no Roman Catholics at all.

Sir *N. J.* He thanks your lordship. He desires he may have the pannel to look upon, and he hopes that is an easy favour.

L. C. J. Let him have the pannel, if it will do him any good. He is a stranger, satisfy him in what we can.

[Which was delivered to him, and he looked it over.]

L. C. J. Tell him, as the jury is called, he shall have every one of the Outlandishmen and Englishmen brought before him.

Sir *N. J.* My lord, he thanks you for this favour.

L. C. B. Sir N. Johnson, tell the Count, they call first an Englishman, then a foreigner, and they shall be brought to view.

L. C. J. Pray, have you told the other persons, that their time to challenge is before the jury is sworn?

Sir *N. J.* The Polander says he can challenge none, because he knows none.

L. C. J. What say the rest?

Mr. *Vandore.* They say they know nobody, and can except against nobody.

Cl. of Cr. Call Sir Will. Roberts. [Who appearing, stood up.]

L. C. J. My lord Coningsmark, there is the foreman.

Sir *N. J.* He has nothing to say against him.

L. C. J. Then hold him a book, and swear him. [Which was done.]

Cl. of Cr. Call Mr. Downing.

Interpret. He says he is no foreigner.

L. C. J. Then he must not be sworn.

Cl. of Cr. Moses Charas. [Who appeared.]

Interpret. He has nothing to say against him. But he himself says, he does not speak English, but he desires to speak French.

Cl. of Cr. Then tell him in French, he must lay his hand on the book and be sworn, and harken to his oath.

Sir *Fr. Winnington.* We challenge him for the king.

L. C. J. For what cause?

Sir *Fr. Winnington.* My lord, we take it that we need not shew any cause unless there be any want of the number in the pannel.

L. C. J. Then we must do him right, and tell him what advantage the law gives him. Tell my lord, you that understand English, that this gentleman is challenged for the king; and if the king shew any good cause for it, he must not be sworn, else he must. And the way for him to cause the king's counsel to shew their cause, (if he desire it) is to challenge all the rest.

Mr. *Williams.* We wave our challenge: for the reason why we challenged him was, because he did not understand English, which will be no reason at all. [Then he was sworn.]

Cl. of Cr. Sir Henry Ingoldsby.

Sir *N. J.* He challenges him, my lord.

Cl. of Cr. Sir William Gulston.

Sir *N. J.* He excepts against him, my lord.

L. C. J. Does he challenge him in respect of what I said to him about the Outlandish gentlemen, that the king is to shew cause? Or how does he challenge him?

Interpret. My lord, he says he hears he is a friend to Mr. Thynn.

L. C. J. Well, let him be passed by then.

Cl. of Cr. Sir John Musters. [Who did not appear.]

Sir *N. Johnson.* He says, my lord, he only desires indifferent persons.

Cl. of Cr. Henry Herbert, esq.

Sir *N. J.* He challenges him.

Cl. of Cr. Richard Paget, esq.

Sir *N. J.* He desires to see him.

L. C. J. Let him be brought into the middle, that he may look upon the prisoners.

Interpret. He has nothing to say against him. [Then he was sworn.]

Cl. of Cr. James Bucgone.

Interpret. He excepts against him.

Cl. of Cr. Claudius Derolee.

Interpret. He excepts against him too.

Cl. of Cr. Charles Beelow.

Interpret. He says he looks like a man, and he does not except against him. [And he was sworn.]

Cl. of Cr. Ralph Bucknall, esq.

Interpret. He challenges him.

Cl. of Cr. Thomas Earsby, esq.

Interpret. He challenges him too.

L. C. J. Look you, sir N: Johnson, pray tell him he can challenge but twenty.

Sir *N. J.* He says very well; he will not do any more. He desires the favour, that those that he challenges may not come near those that are sworn.

L. C. J. Well, it shall be so; we will take care of it.

Cl. of Cr. Richard Gowre, esq.

Sir *N. J.* He excepts against him.

Cl. of Cr. George Hocknall, esq.

Interpret. He challenges him. [But then the count looking in his paper, retracted the challenge, and he was sworn.]

Cl of Cr. Peter Vandenhagen.

Interpret. He says nothing to him. [Then he was sworn.]

Cl. of Cr. Walter Moyle, esq.

Interpret. He does not challenge him. [He was sworn.]

Cl. of Cr. Christopher Ripkey.

Interpret. He does not challenge him. [He was sworn.]

Cl. of Cr. Thomas Henslow, esq.

Interpret. He does not except against him. [Then he was sworn.]

Cl. of Cr. Lewis Doncarr.

Interpret. He challenges him.

Cl. of Cr. Peter Lecane. [He did not appear.] David Collivaux.

Interpret. He challenges him, because he knew Mr. Thynn, they say.

Cl. of Cr. Andrew Lodderley.

Interpret. He challenges him.

Cl. of Cr. James Burk.

Interpret. He challenges him.

Cl of Cr. Daniel Griggion.

Interpret. He does not challenge him. [So he was sworn.]

Cl. of Cr. Robert Jordan, esq.

Interpret. He challenges him.

Cl. of Cr. Lucy Knightley, esq.

Interpret. He challenges him.

Cl. of Cr. John Haynes, esq.

Interpret. He does not except against him. [He was sworn.]

Cl. of Cr. Lewis le Count.

Interpret. He challenges him.

Cl. of Cr. John Belliew.

Interpret. He challenges him.

Cl. of Cr. James Frontein.

Mr. *Williams.* We challenge him for the king.

Cl. of Cr. John Massey.

Interpret. He challenges him.

Cl. of Cr. Andrew Primow.

Interpret. He challenges him.

Cl. of Cr. Nicholas Benfor.

Interpret. He challenges him. He says they are all Walloons, and therefore he challenges them.

L. C. J. Why does he except against Walloons?

Interpret. Because they have always served against the Swedes.

Cl. of Cr. John Lebarr.

Interpret. He does not except against him. [And so he was sworn.]

Cl. of Cr. Cryer, reckon these, &c. Sir Will. Roberts, bart. Moses Charas, gent. Richard Pagett, esq. Charles Beelow, gent. Geo. Hocknall, esq. Pet Vandenhagen, gent. Walter Moyle, esq. Chr. Ripkey, gent. Tho. Henslow, esq. Dan. Griggion, gent. John Haynes, esq. and John Lebarr, gent.

Then Proclamation for Information and Prosecution was made: and a Chair was set for the Count, at his request.

Cl. of Cr. Gentlemen, look upon the prisoners, you that are sworn, and hearken to their cause,* they stand indicted *prout* in the indictment, *mutatis mutandis*——against the peace of our sovereign lord the king, his crown and dignity. Upon this indictment they have been arraigned, and thereunto have severally pleaded, Not Guilty: and for their trial, have put themselves upon God and their country; which country you are. Your charge is to enquire, whether they, or any of them are Guilty of the offences whereof they stand indicted, or Not Guilty. And if you find them, or any of them Guilty, you are to find what goods or chattels, lands or tenements, they had at the time of the felony and murder committed, or at any time since. If you find them or any of them Guilty, you are to enquire, whether they or any of them fled for it: if you find that they, or any of them fled for it, you are to enquire of their goods and chattels, as if you had found them Guilty; if you find them or any of them Not Guilty, nor that they did fly for it, you are to say so, and no more, and hear your evidence. But if you acquit any one of the principals——

* So in the former Edition.

L. C. J. That is a mistake, it must be all the principals.

Cl. of Cr. If you acquit the principals, you are not to enquire of Charles-John Coningsmark as accessary before.

Mr. *Keene.* May it please your lordship, and you gentlemen that are sworn of this jury, George Borosky alias Boratzi, Christopher Vratz, and John Stern, the prisoners at the bar, stand here indicted; for that they not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, the 12th day of February, in the 34th year of the reign of this king, feloniously and voluntarily, and of their malice aforethought, did make an assault upon Thomas Thynn, esq. at the parish of St. Martin's in the Fields in this county; and that the said George Borosky having in his hands a blunderbuss, which he knew to be charged with four leaden bullets, did discharge it at Mr. Thynn, and gave him four mortal wounds, of which wounds he languished till the 13th day of February, and then died: and that they the said Christopher Vratz and John Stern were there present, aiding, assisting and abetting him to commit the said felony and murder; and so that they the said George Borosky, Christopher Vratz, and John Stern, did of their malice aforethought, in manner aforesaid, murder the said Thomas Thynn. And Charles-John Coningsmark, the other prisoner at the bar, stands indicted, for that he before the felony and murder aforesaid, so done and committed, to wit, the 12th day of February aforesaid, did of his malice aforethought, move, incite, counsel, persuade, and procure the said Borosky, Vratz, and Stern, to do that murder, against the peace of the king, his crown and dignity. To this indictment they have severally pleaded Not Guilty; and you are to enquire, whether they are Guilty, as they are charged, or no.

Sir *Francis Withens.* My lord and gentlemen, I am of counsel in this case for the king, against the prisoners at the bar. There are three of them indicted as principals in this murder, the fourth as accessary before. In this case that is now before you, gentlemen, I cannot choose but take notice unto you, that a murder of this nature has never been heard of to be perpetrated upon English ground, both in respect of the person murdered, and in respect of the circumstances of the fact. For the person murdered, was a gentleman of that quality and estate, that he hath left but few equals behind him. That this man being in his coach, should be way-layed, surprized, and murdered, and this murder committed in the midst of our streets, is that which works amazement in all English hearts. And our only comfort upon this sad occasion is, that there is not one native of this country found amongst all those that are accused to be instruments in this barbarous fact.

I did observe to you, gentlemen, before, that there are three named to be principals; Borosky, whom for distinction sake, I shall call by the name of the Polander, Vratz, who is called the captain, and Stern, who is called the lieutenant. Borosky the Polander, we say, was the man that discharged this blunderbuss against this worthy gentleman that was slain; but though he was the only man that discharged it, yet if we can satisfy you that Vratz and Stern were with him at the same time, aiding and assisting him when he gave the blow, they are as much principals as he that shot off the gun. It will be natural to open to you what is said against this captain Vratz, he is a Swede by birth, and did formerly belong to count Coningsmark; he was a retainer to him. Afterwards, I think in the war he was made a captain. This gentleman had been formerly in England, but at the last time he came, which was three weeks, or thereabouts, before the murder was committed, his lodging was in King-Street at Westminster. This captain Vratz, we shall prove, did often discourse that he had a quarrel with Mr. Thynn, that several times before this murder was actually done, he ordered his servant to way-lay his coach; and upon that very fatal day, the 12th of February, when this unhappy accident fell out, having information that Mr. Thynn was gone out in his coach, immediately he puts on his boots, gives order to his servant to bring his clothes to him at such a place, because he should remove his lodging, he said, that night, that he should bring his clothes to the Black-Bull Inn in Holborn, and bring his horse thither too. When he went from his lodging, the Polander went along with him, and they came to the Black-Bull in Holborn, where they met with Stern. We shall shew you, that these three gentlemen being thus armed, one with a blunderbuss, the second with pistols, and the other very well provided, rid out about six o'clock, the murder being committed about seven or eight. At their going out, they enquired which was their way to Temple-Bar; they were seen to ride through the Strand to St. James's, the fact was done in the Pall-Mall, and we shall shew you the way of it was thus; Mr. Thynn passing through the street to go home in his coach, three persons came riding up to the coach side, and while the one stopped the horses, immediately the blunderbuss was discharged into the coach against Mr. Thynn, and gave him those wounds, of which the next morning he died, presently these three men ran away, but one of them let fall a pistol upon the place, which I shall observe as a material circumstance against these persons, because we shall prove whose the blunderbuss was. These things being done, this murder committed, and they gone away, it began to work in people's thoughts, and circumstances began to come out, that this blunderbuss should be ordered to be brought by captain Vratz, who had discoursed with many persons about the quarrel he had with Mr. Thynn, and given order to his servant to way-lay his coach; and these persons being rid out at that time, there was a

great suspicion that they did it. Great care there was taken, and great means used, as no doubt there would be, to apprehend the malefactors; and by great providence it was found out at last, that this captain Vratz, according to his word, had altered his lodging, and was got to a doctor's house, that lived, I think, in Leicester-Fields. Being there surprized, and coming upon his examination, he did not deny but he was there one of the three that was at the place when and where Mr. Thynn was murdered, but he pretended, he did intend to fight him in a duel, and kill him fairly, as he called it. But, gentlemen, I must observe this to you, in my small time of experience of the world, I never knew a man go to fight a duel, and carry out with him a second with a blunderbuss. It is not possible he should go with such a design as he would insinuate, but rather with an intention of murder. For the Polander, he came into England but the Friday before, and so we shall prove to you that which will stick hard upon the count. Upon Friday, he being landed, he enquires for the young count's tutor, which was at an academy of one Monsieur Faubert's; and there he enquires for the count's secretary; he lay there, I think, that night, and upon Saturday he was conveyed to the count's lodgings. There also he was lodged for one night. The count was pleased to bespeak him a very good sword, and a coat for him, that he might be well armed, and there he lay on Saturday night, as I said, the night before the murder was committed. Upon Sunday, gentlemen, there being a message sent to this doctor, where Vratz lay, the night following that the count would speak with the doctor, the doctor came, and the doctor and the Polander went away to captain Vratz's lodging, and from thence to Holborn, to the Black-Bull, and the captain was carried in as much secrecy as he could, for he was carried in a sedan; and I think we shall be able to prove, by the persons that carried him, that this was the man. For the other gentleman, Stern, the lieutenant, as they call him, he was an ancient acquaintance of captain Vratz's, had known him long ago in England, and complained to him, that lodgings might be very dear; but the captain told him, he had a design; and if he would assist him as a brave fellow, would maintain him, and he should not want money to bear all his charges. But we shall prove that this was the third person that rid out with the Polander, and the captain in this garb that I told you of, this night that the fact was done. And indeed, Gentlemen, upon their examination, they have every one confessed the fact; even the Polander confessed that he did shoot off the blunderbuss; and Vratz confessed that he was there, and the lieutenant Stern; so that if there had been no more evidence, it would have been sufficient to maintain the issue, and in our circumstances, it is more perhaps than could be expected. This, gentlemen, is the principal sum of the evidence, that will be given against the three principals. For the fourth, gentlemen, count Coningsmark, he is a person of great quality, and I am extraordinary sorry to find the evidence so strong against him, as my brief imports; I wish his innocence were greater, and our evidence less; for he is a person of too great quality, one would hope, to be concerned in a thing of this nature; but that he was the main abettor and procurer of this barbarous business, we shall prove upon these grounds: First, That he had a design upon Mr. Thynn's life; for, gentlemen, coming into England about three weeks before this matter was transacted, first he lies in disguise, and lives private, and removes his lodging from place to place frequently; that he sent a person to enquire of the Swedish resident, whether, or no, if he should kill Mr. Thynn in a duel, he could by the laws of England afterwards marry the lady Ogle? So that Mr. Thynn's death was in prospect from the beginning. Gentlemen, we shall prove to you, as I did in some measure open before, that the count himself was pleased to give express order, that the Polander should have a good sword bought him; that before he came into England, he was very much troubled, by reason of the stormy weather, for fear he should be cast away; that he lodged him in his own lodging the night before this act was perpetrated; and that captain Vratz was the morning before, and immediately after, with the count. Another thing, gentlemen, that I had almost forgot: The count was willing to be instructed in the laws of England, and enquired, whether a man might lawfully ride out upon a Sunday? and being told, That after sermon he might; he was very well satisfied; and the day he enquired of it, was the day that the murder was committed. After the thing was done, count Coningsmark, the next morning, pretended he was to go to Windsor, and leaves his lodging; but instead of going to Windsor, (being still in his disguise) he goes to Rotherhithe, by the water-side, and there, I think, he continues two or three days in a black peruke, (and that is disguise enough for such a gentleman) and afterwards he goes to Gravesend; but, I think, he was upon the water some time, before he thought it convenient to land; and there he was surprized in this disguise. And when he was surprized and taken, he shewed himself to be in great disorder; but being charged with the fact, acknowledged nothing of the matter. But how it should come to pass, that he should lie so long disguised, upon no pretence that can be known, and afterward to pretend that he had a business to effect, and then he was to go into France, that will lie upon him to answer. But these are the inducing evidences that we give to you; his keeping the Polander in his house, his disguising of himself, and his enquiring, whether if he killed Mr. Thynn, he might not marry my lady Ogle? His flight the next day, and pretending to go to Windsor, when he went quite the other way, and all in a disguise; and these persons not having any

appearance, or any reason whatsoever, for any particular quarrel to Mr. Thynn, but the count having some disgust to him, upon terms that the witnesses will tell you of by and by, and being related to the count, we must leave it to you to judge, whether these gentlemen did it singly and purely upon their own heads, or whether they were not set upon it by the count.

Sir *Fr. Win.* My lord, I shall not trouble you with repeating of our evidence, but we will begin and call our witnesses, directly to prove the murder done by these gentlemen; we will prove the fact downright upon them, and then we shall afterwards come to the count.

Mr. *Williams.* My lord, first we will direct evidence to the principals, and then to the accessary. Call William Cole and William Ellers.

L. C. J. Swear some person to interpret the evidence that shall be given: I do it for the sake of the aliens that are of the jury; for some of them understand no English, and they will not know what to make of the evidence, if they do not repeat it to them in their own language.

Then *Vandore* and *Wright* were sworn for the King.

Sir *N. Johnson.* My lord desires that the doctor and the taylor that are in prison may be sent for, to be here, for they are witnesses for him.

Sir *Fra. Winn.* We desire they may be here too, for they are witnesses for the king, and I believe they are here, my lord.

Sir *N. J.* Mr. Vandore does not speak French.

Sir *W. Roberts.* Mr. Craven speaks Dutch and French very well.

Mr. *Craven* was sworn.

Sir *N. J.* The count desires the favour of pen and ink.

L. C. J. Let the count have pen and ink.

Mr. *Williams.* Call William Cole and William Ellers. (Who appeared, and were sworn.) Which is William Cole? Set him up. Acquaint my lord and the jury how Mr. Thynn was assaulted, and the manner of it.

Cole. My lord, my master was coming up St. James's-street from the countess of Northumberland's.

Sir *Fra. Winn.* Name your master.

Mr. *Williams.* Who was your master?

Cole. Mr. Thynn. And I had a flambeau in my hand, and was going before the coach, and coming along, at the lower end of St. Alban's-street, I heard the blunderbuss go off; so upon that I turned my face back, and saw a great smoke, and heard my master cry out he was murdered: And I see three horsemen riding away on the right-side of the coach, and I pursued after them, and cried out murder: I ran to the upper end of the Haymarket, till I was quite spent, and was able to go no further; and turning back again, my master was got into the house, and I understood he was wounded: That is all I know.

Mr. *Williams.* You say you heard a blunderbus go off, and turning back, you saw three men riding away from the coach?

Cole. Yes.

Mr. *Williams.* Look upon the prisoners at the bar: Can you say all of them, or any of them were the men?

Cole. No, I cannot; I did not see their faces, but I saw the horse of one of them was a little bay horse.

Mr. *Williams.* But do you take any of them men to be one of the three?

Cole. I did not see any of their faces.

Sir *Fra. Winn.* What time of night was it?

Cole. A quarter after eight.

Sir *Fra. Winn.* Pray what day of the week?

Cole. Sunday.

Sir *Fra. Winn.* What day of the month?

Cole. The 11th or 12th of February.

Sir *Fra. Winn.* Then, where is William Ellers? Pray do you tell the court and jury how Mr. Thynn was wounded, and by whom, and what you know of it.

Ellers. My lord, I came with my master from St. James's-street, from my lady Northumberland's, and as I came at St. Alban's-street, there came three men riding by the right-side of the coach, and as they rid, one of them turned about, and bid me stop, you dog; and just as I looked about, the fire was let into the coach upon my master, and the men ran away as fast as they could.

Sir *Fra. Winn.* How many were there of them?

Ellers. There were three.

Sir *Fra. Winn.* Were those men at the bar, or any of them the persons?

Ellers. I cannot tell.

Sir *Fra. Winn.* What were the words they said when the coach was stopped? Hold, hold, or stop, you dog?

Mr. *Williams.* What condition was your master in then? Was he shot then?

Ellers. Yes.

Mr. *Williams.* We will give you some evidence now out of their examinations.

L. C. J. You had best give some evidence of his wounds.

Mr. *Williams.* Yes, we will. Call Mr. Hobbs the surgeon.

L. C. J. Look you, Mr. Craven, you hear what these witnesses say, tell it to the gentlemen of the jury that are outlandish men, That these witnesses swear, there were three men did do this thing; the one of them stopped the coach, and the other shot into it, but it was at that time of night, they could not know their faces, and they all rid away.

Mr. *Craven.* My lord, if you please, the witnesses may speak by degrees, and between every witness I will give the jury an account.

L. C. J. Well, it shall be so; but they say no more than what I tell you, That three men did do this. Then he interpreted it to the Jury.

L. C. J. What says that gentleman to you?

Mr. *Craven*. He says he hears that three men did do it, but he says, he does not hear that they knew any of them.

Then Mr. *Hobbs* was sworn.

Mr. *Williams*. Had you the searching of Mr. Thynn's body after it was hurt?

Hobbs. Yes.

Mr. *Williams*. How did you find him?

Hobbs. I was with him, Sir, that night he was wounded, and I found him shot with four bullets, which entered into his body and tore his guts, and wounded his liver and his stomach, and his gall, and wounded his great guts, and his small guts, and broke one of the ribs, and wounded the great bone below.

Sir *Fra. Winn*. What time came you to him?

Hobbs. About 9 or 10 of the clock.

Sir *Fra. Winn*. Did he die of those wounds?

Hobbs. Yes, he did die of those wounds.

Mr. *Williams*. Did you apprehend them all mortal, or any, or which of them?

Hobbs. I believe there was never a wound but it might prove mortal.

Sir *Fra. Winn*. Now tell us what day of the week, and what day of the month it was.

Hobbs. It was Sunday night, the 12th of February, I think.

L. C. J. What did you observe of the bullets; was there any thing done to them more than ordinary?

Hobbs. I could not see any thing, I have them here, my lord.

Lord Chief Baron. Were they iron or lead?

Then Mr. *Hobbs* delivered them into Court.

Hobbs. Two of them, the little ones, may be iron; for one of them went through a thick bone, and yet there was no impression on it.

L. C. J. And this that has the impression, you think might be done against the bones.

Hobbs. Yes.

L. C. J. Was this left ragged on purpose to do the more mischief?

Hobbs. Which, my lord?

L. C. J. This that is left at the end here. Would this be more mortal than another bullet, or harder to heal?

Hobbs. No, but as they take up a greater space in flying.

L. C. J. Would not the raggedness hinder the healing?

Hobbs. No, only bruise the flesh, which bruised flesh must come away before it can be healed. All bullets wound by bruising of the flesh.

L. C. J. Well, these were the four bullets that were found in Mr. Thynn's body?

Hobbs. I verily believe they are. Dr. Lower had them out of my hands for a day or two, but I believe them to be the same.

L. C. J. Was there any lodged in the stomach?

Hobbs. Yes, one of the little ones.

L. C. J. Had they broke the great bone?

Hobbs. Yes, the great bone in the bottom of the belly.

L. C. J. Two of them?

Hobbs. A great one and a little one; two of them passed through that bone, and lodged in the back-bone.

L. C. J. Was any of them gone through the body?

Hobbs. One of them lay between the ribs and the skin.

L. C. J. None were got quite through then?

Hobbs. None.

Sir *Fra. Winn*. Call the Coroner, Mr. White.

L. C. J. Tell the jury, Mr. Craven, what this witness has said. [Then he interpreted it.

L. C. J. What says that gentleman?

Mr. *Craven*. He says 'tis very well, he understands part of it.

L. C. J. Do the rest of them understand it?

Sir *N. J.* He told it in French to the others.

L. C. J. Let Mr. Hobbs have the bullets again when the jury have seen them.

Then Mr. *White* was sworn.

Sir *Fra. Winn*. Now we will ask the Coroner a question or two. Pray will you acquaint my lord, what you know of this murder of Mr. Thynn.

White. On the 13th of February, in the afternoon, I sat upon the body of Thomas Thynn, esq. and I found he had four holes on his right-side, behind his short-ribs, and they seemed to be like holes made with bullets. And I gave order to open the body.

L. C. J. And there the bullets were found?

White. There the surgeon found them.

L. C. J. Were you by?

White. I was at the taking them out.

L. C. J. 'Tis fit that the Polander should have one to interpret what is said against him.

Mr. *Williams*. Captain Vratz, you hear what is said, and understand it.

Interpreter. He says he does understand it.

Mr. *Williams*. Pray tell the Polander what is said. That is, the two first witnesses say, three persons assaulted the coach, and one shot into the coach, and by that means Mr. Thynn was killed, by the shot out of the blunderbuss: And the surgeon does say, that these four bullets were found in his body. [Then it was interpreted to the Polander.

Interpreter. He says, my lord, he cannot tell how many bullets were in, he did not charge it himself, but he fired it, he says.

Sir *Fra. Winn*. He confesses he fired then.

Sir *W. Roberts*. My lord, the jury desire to know if the Pole can tell who did charge it?

L. C. J. Ask him who charged it.

Interpreter. He can tell, my lord, he says.

L. C. J. It will not be very material that, for his evidence can charge no body but himself.

Sir *Fra. Winn*. Now, my lord, if you please we will call those persons, the justices of the peace that examined these men upon their apprehension, for the murder of Mr. Thynn.

Call Mr. Bridgman and sir John Reresby. [Who were sworn standing upon the bench.]

Interpreter. My lord, he says the blunderbuss was given him by the captain.

Sir *Fra. Winn.* Mr. Bridgman, were you by at the taking of the examination of these persons?

Bridgman. Yes, I was. And these were the examinations that were taken.

Sir *Fra. Winn.* Were you by all the while?

Bridgman. Sir John Reresby and I did take these examinations *. And I will read them if you please.

L. C. J. As to that, let it alone, if you please. Mr. Bridgman, when the Polander was examined concerning this murder, what did he say?

Bridgman. He owned it, to the best of my remembrance; but I refer to the examination if I mistake.

L. C. J. Look upon it to refresh your memory, Sir, and then tell us.

Mr. *Williams.* Look first what the Polander said, and then we will go on to others.

Sir *Fra. Winn.* Now, Sir, will you please to acquaint my lord and the jury what he or any of them confessed of the fact.

L. C. J. What the Polander confessed first.

Bridgman. The Polander, upon his examination before sir John Reresby and me, did own that he came into England at the desire of count Coningsmark.

L. C. J. Speak only as to himself; for it is evidence only against himself.

Sir *Fra. Winn.* My lord, his confession is entire, and we can't separate it.

L. C. J. But we must direct what is just and fitting. His evidence can charge no body but himself; and that is the reason I would not have his examination read; for it cannot be read but only against himself.

Mr. *Bridgman.* Upon his examination he confessed, that he was present when the captain stopped the coach; that he fired the musquetoon by the captain's order; and that before he did it, the captain bid him, as soon as ever he had stopped the coach, to fire.

Sir *Fra. Winn.* Did he confess he did fire?

Bridgman. Yes, he did.

L. C. J. North. As he does now.

L. C. J. Look you, now do you tell the Polander, that the evidence against him is, that he did fire this musquetoon, or blunderbuss, or what you will call it.

Interpreter. He does confess it.

L. C. J. Tell him what I say, that this evidence is given against him: That he did formerly acknowledge he discharged the blunderbuss into the coach, when captain Vratz stopped the coach.

Interpreter. Yes, my lord, he says it is true, he fired according to his order.

Sir *Fra. Winn.* Pray, Sir, consider what was confessed by the captain.

Bridgman. He confessed he had a design to fight with Mr. Thynn, and Mr. Thynn having several times refused to fight with him, he resolved to oblige him to fight by force, and therefore he had taken these persons along with him; that if he should fail in his revenge, or after the thing done he should be pursued, he might make his escape. He confessed he was there, and stopped the coach, but the Polonian fired by mistake; for he did not bid him fire, but only in case he should be hindered from fighting or making his escape.

L. C. J. He confessed he came to fight Mr. Thynn?

Bridgman. Yes, he did so.

L. C. J. And that he stopped the coach?

Bridgman. Yes.

Sir *Fra. Winn.* You said after the thing was done, what was that thing?

Bridgman. After he had fought, in case he should be stopped in his escape, he bid the Polander fire.

Sir *Fra. Winn.* Did he confess any thing of the delivery of the gun to him?

Bridgman. He confessed the Polander had the gun, but he said nothing from whom he had it.

L. C. J. Now captain Vratz, you hear what is said against you by this gentleman; that you owned you came thither with a design to fight Mr. Thynn, and force him to fight if he should not be willing; and you brought these men with you to carry you off, in case you should kill him; that you did stop the coach, and you said you did not give him order to fire unless he refused to fight you.

Bridgman. No, unless he could not make his escape.

L. C. J. Now what say you to this?

Sir *N. Johnson.* He desires to understand it.

L. C. J. Why then speak it to him, you that are the interpreter?

[Then Mr. Craven interpreted it to him in French.]

L. C. J. Now speak aloud, and tell us what he says.

Mr. *Craven.* He says it is very true, that he was there, and had that gentleman and the Polander along with him as his servants, Mr. Thynn being a gentleman that had always a great many servants about him. And he says, my lord, that he had received an affront from Mr. Thynn; upon that, he challenged him, and sent letters out of Holland to desire him to give satisfaction by fighting, but could have no satisfaction; and therefore because in England duels were forbid, he thought to make a rencounter of it, and took these gentlemen

* "These Examinations are inserted at the end of this trial, the chief justice, out of favour to count Coningsmark, not permitting them to be read in court, as he ought to have done; for the examinations are indeed no evidence against any but the examinant, yet are they not to be suppressed because naming others, but ought nevertheless to be read, though with the aforesaid caution to be given to the jury, otherwise the most material evidence might be quite neglected, since all confessions must be taken entire, or not at all." Note in former edition.

along with him, that if so be Mr. Thynn's servants should assault him, or knock him on the head, or hinder him from escaping, that they might get him off.

Sir *Fra. Winn.* I beg one favour of you, Sir, that you would ask him one question, and that is, What the affront was that Mr. Thynn gave him?

L. C. J. That he apprehends he gave him?

[The Interpreter asked him.]

Mr. *Craven.* My lord, he says, that at Richmond he heard he spoke and gave out very ill language of count Coningsmark, who was his friend, and a man he had many obligations to, and so of himself too, and he would never acquaint count Coningsmark with it, but would have satisfaction, and take the quarrel upon himself, being a gentleman; he says, that he heard that he called him Hector, and gave such ill language as was never to be suffered.

Sir *N. Johnson.* And the fashion in Germany is, if they won't fight, to shoot them.

Sir *Fra. Winn.* How can you tell that, Sir? the interpreter that asked the question says no such thing.

L. C. J. Pray will you ask him this, whether ever he saw Mr. Thynn, and how many times?

Mr. *Craven.* He says he has seen him several times in the playhouse, and riding in his coach; he did not see him at Richmond, for if he had, he would not have put it up so long.

Mr. *Williams.* I believe he never spoke to him in his life.

L. C. J. Ask him that question, whether he ever spoke to him?

Mr. *Craven.* He says he had no friend to send to Mr. Thynn, and he could not speak with Mr. Thynn himself; for Mr. Thynn might think that he was not a gentleman good enough to fight with him.

L. C. J. Ask him this, about what time he saw him at the play-house.

Mr. *Craven.* He says he does not remember exactly the time when he did see him at the play-house.

L. C. J. Ask him whether this affront that he pretends, was given since he last came over or when he was in England before?

Mr. *Craven.* He says it is eight months ago since he received the affront.

L. C. J. That was before he went out of England?

Mr. *Craven.* Yes, it was before.

Sir *Fra. Winn.* He says he writ to Mr. Thynn out of Holland; we desire to know, by whom he sent his challenge?

L. C. J. Ask him if he sent a challenge to Mr. Thynn and by whom?

Mr. *Craven.* He says he could send no less than a gentleman; and he had never a gentleman to send by, and so he sent his letter by the post.

Mr. *Williams.* Mr. Bridgman, now we would ask you concerning Mr. Stern, the third man.

Bridgman. Let me have the examination, and I will look upon it and tell you.

Mr. *Williams.* Pray, do, Sir, tell us what he said?

Mr. *Bridgman.* Upon his examination he confessed, that the captain told him he had a quarrel with a gentleman, and that if he would assist him in it, he would make his fortune. And that the captain gave him money to buy the blunderbuss.

Sir *Fra. Winn.* Stern did confess that, did he? *Bridgman.* Yes.

L. C. J. Did he confess he was at the fact?

Bridgman. Yes, he confessed he was at the fact; and he said when he came beyond Charing Cross, he was about ten yards before, and he heard the captain say, stop, to the coach, upon which he turned about, and presently saw the shot made, and he saw the other persons ride away, and he made away after them: and the captain further told him, that he would give two or three, or four hundred crowns, to find a man that would kill Mr. Thynn.

Sir *Fra. Winn.* What did he speak about stabbing, or about an Italian?

Bridgman. He said that the captain desired him to get an Italian that would stab a man, and that he would get two poniards for that purpose; and that it was before the Polonian came over.

L. C. J. This is no evidence against the captain; but pray will yout ell Stern the lieutenant what it is that Mr. Bridgman does testify against him; that he acknowledged thus and thus before him. And pray speak it again, Mr. Bridgman.

Bridgman. The captain told that gentleman, that he had a quarrel with a gentleman, with whom he was resolved to fight; that he wanted a good servant, and if he would assist him, he would make his fortune; that he gave him money to buy the musquetoon, and owned he was there; that he went out with the captain and Polander on horseback, about five or six o'clock on Sunday; that they went towards Charing-Cross, and when they were gone beyond Charing-cross into the Pall-Mall, he heard the captain say to the coachman, stop: and turning immediately, he saw the shot go off; and that they riding away, he followed them; and that before the Polander came over the captain desired him to get an Italian to stab a man.

[Then that was interpreted to Stern.]

Mr. *Craven.* My lord, he denies that he spoke any thing of four hundred pounds, or about the Italian.

L. C. J. Tell him it is testified, that he confessed he was at the shooting of this gentleman.

Mr. *Craven.* He says he was there, and being about ten yards off, he heard one say Hold, to the coach, but he cannot say it was the captain.

Sir *Fra. Winn.* But was he there?

Mr. *Craven.* Yes, he says he was.

Sir *Fra. Winn.* Who caused him to be there?

L. C. J. Ask him upon what occasion he was there?

Mr. *Craven.* He says the captain entreated

him to be there to be his second, to fight with a gentleman, and that was the reason.

L. C. J. Pray tell him it is testified here, that he bought the musquetoon and charged it.

Mr. *Craven.* He says, he did assist at the loading of it, he was by.

Sir *Fra. Winn.* Pray, my lord, let us know who it was assisted him?

L. C. J. Why, that is no evidence against any body.

Sir *Fra. Winn.* But, my lord, it was delivered to the Polander charged, and we desire to know who loaded it?

L. C. J. North. That is no evidence; but yet the question may be asked, and then the jury may be told it is no evidence.

L. C. J. But we must not let the jury be possessed by that which is not evidence.

L. C. J. North. Pray will you ask him, Mr. Craven, who helped him to load the gun?

Mr. *Craven.* The captain was by, he says, and the captain and he did it together.

Sir *Fra. Winn.* Now we will ask Sir John Reresby the same questions: you were by, Sir, at the examinations of these three men, pray what did the Polander say upon his examination?

Sir *John Reresby.* My lord, I cannot charge my memory with the particulars; but if your lordship pleases, I will read it.

L. C. J. No, refresh your memory with it, and then tell us the substance of it.

Sir *John Reresby.* In general, he did confess to me, that he was the person that did discharge the blunderbuss into Mr. Thynn's coach, and that he was commanded so to do by captain Vratz.

L. C. J. That is the substance of all.

Sir *Fra. Winn.* That is as to him; but what did Captain Vratz say?

L. C. J. He said that he did go out with an intention to fight with Mr. Thynn, and did take these persons with him; that he did not order the Polander to discharge, but he mistook him when he bid the coachman stand, the other apprehended he bid him shoot, and he did so.

Mr. *Williams.* What said Stern?

Sir *J. Reresby.* Stern did say this, that the captain told him he had a quarrel with an English gentleman, and desired him to go along with him and assist him in it, and be his second; but, said he, I was chiefly carried out to keep off the people, in case there should be a croud about them when they were fighting; this is the chief part of what they did confess.

L. C. J. We would not trouble you with more than is material. Did he acknowledge he was there at the time when he was shot?

Sir *J. Reresby.* Yes, he did, about nine or ten yards off, I think.

L. C. J. All three confessed they were there?

Sir *J. Reresby.* Yes, they did so.

L. C. J. (North.) They had a design of killing, which was unlawful.

Sir *J. Reresby.* They said they came on purpose to fight.

Sir *Fra. Winn.* Call Michael Fenderoston. My lord, we would willingly spare your time, and offer only what is proper in this case, and now we shall produce our evidence against the Count, and if any thing fall out in that evidence that touches these three men (which we think will be but the killing of dead men) your lordship will take notice of it. Now we shall not go to open the heads of our evidence against the count. Sir Francis Withens has given an account of the general, and our witnesses will best declare it.

Mr. *Williams.* We will begin with Frederick Hanson. [Who was sworn and stood up.] How long have you known count Coningsmark?

Hanson. A matter of four years.

Mr. *Williams.* Pray do you remember his last coming into England?

Hanson. Yes, my lord, I do remember it.

Mr. *Williams.* Then let us know the time?

Hanson. I think it is above a month since.

Mr. *Williams.* Where was his lodging first?

Hanson. The first time I saw him was in the Post-house.

Mr. *Williams.* Did he come privately or publicly?

Hanson. Privately, to my best knowledge.

Mr. *Williams.* Which was his first lodging?

Hanson. In the Hay-Market.

Mr. *Williams.* Where there?

Hanson. At the corner house.

Mr. *Williams.* How long did he continue there?

Hanson. A matter of a week.

Mr. *Williams.* Pray in all that time did he keep privately at home, or did he go abroad sometimes?

Hanson. I believe he kept his chamber all the time.

Mr. *Williams.* Were you with him at any time there?—*Hanson.* Yes, I was.

Mr. *Williams.* What company did use to be with him to your knowledge?

Hanson. To my knowledge I have seen Dr. Frederick in his company.

Mr. *Williams.* One Dr. Frederick, you say, who else?

Hanson. When I came from Whitehall on a Sunday in the evening, when my lord was going to bed, I called, if I could be admitted to see him, so I went in to him, and a little after the doctor came.

Sir *Fr. Winn.* Pray, Sir, at that time that he was in that lodging, did he wear his own hair, or was he in a disguise?

Hanson. That Sunday night he was in his night-cap and night-gown, ready to go to bed.

Mr. *Williams.* When you first came to him to the Post-house, did you go of your own accord, or were you sent for?

Hanson. Count Coningsmark sent for me.

Mr. *Williams.* Was it sent in his own name or in the name of another?

Hanson. It was in a strange name, Carlo Cusk.

Mr. *Williams.* Have you the note by you?

Hanson. No.

Mr. *Williams.* In whose character was it writ?

Hanson. In the count's own character.

Sir *Fr. Winn.* What was his name in his first lodging? What title was he called by, captain, or what?

Hanson. I know of no other name but only the stranger.

Sir *Fr. Winn.* Was it known to any person in the family? —*Hanson.* No.

Mr. *Williams.* When did he remove from thence?—*Hanson.* I know not.

Sir *Fr. Winn.* You say the first place of his lodging was in the Hay-market, where did you see him the second time?

Hanson. At a corner house, I know not the name of the street.

Sir *Fr. Withens.* Did he direct you to come to him?

Mr. *Williams.* Had you any discourse with him, what his business was here in England?

Hanson. I asked him, if we should have his company here some time? He told me he was come over about some business, and was afterwards to go into France.

Mr. *Williams.* Then he never told you what that business was?—*Hanson.* No.

Mr. *Williams.* Where was his second lodging, do you say?

Hanson. It was at a corner house, not above two streets off from the former.

Mr. *Williams.* How long did he continue in his second lodging?

Hanson. A few days, because the chimney did so smoke, that he could have no fire made in it.

Sir *Fr. Winn.* Then I ask you in his second lodging, was he there publicly or privately?

Hanson. He was there after the same manner that he was in his first lodging.

Mr. *Williams.* Whither went he afterwards?

Hanson. To St. Martin's-lane, I think it is called.

Mr. *Williams.* How long did he continue there?

Hanson. There I saw him the last time before he went away.

Mr. *Williams.* When was that?

Hanson. It was Sunday evening, after I came from Whitehall.

Mr. *Williams.* Was it near the time of killing Mr. Thynn?

Hanson. It was about two or three hours afterwards.

Mr. *Williams.* Was he as private there as he was in his other lodgings?—*Hanson.* Yes.

Mr. *Williams.* What company came to him thither?

Hanson. The same that came to him in the other:

Sir *Fr. Win.* Who were they?

Hanson. The doctor was in his company.

Sir *Fr. Win.* And who else?

Hanson. I saw one captain Vratz there.

Sir *Fr. Win.* Sir, I ask you upon your oath, you are a man of understanding, did you frequently see captain Vratz in his company? How often do you remember you saw him at his lodging?

Hanson. I do not remember that I saw captain Vratz at that lodging above one single time.

Mr. *Williams.* Pray, Sir, thus: Did captain Vratz come with the count into England this last time?

Hanson. To my best remembrance he did.

Mr. *Williams.* You say captain Vratz came with the count to England.

Hanson. I believe he was before the count, but not long before: I cannot exactly tell.

Mr. *Williams.* How long before the count?

Hanson. Truly I cannot tell, but I believe not long.

Mr. *Williams.* What makes you think he came into England with him?

Hanson. Because I saw him in company with the count, as soon as I saw the count.

Mr. *Williams.* Were they in company at the post-house?—*Hanson.* Yes.

Sir *Fr. Win.* And you saw him once at his first lodging?—*Hanson.* Yes.

Mr. *Williams.* Pray, Sir, have you carried any message from the count to the Swedish resident?

Hanson. My lord, I can say this upon my oath, to my best remembrance. count Coningsmark never charged me, or gave me any positive order to go to the Swedish envoy, but he did name the Swedish envoy to me, as if he were willing to know his advice; and so I being obliged to pay my respect to the Swedish envoy, who had treated the young count and myself very civilly before; and so paying my respects to the said envoy, I did remember the conversation I had with the count, and spoke with the said envoy about this business, and that is all that I can say.

Sir *Fr. Win.* What was that message?

Hanson. I say there was no direct message: But I say this was the business: count Coningsmark told me in private familiar discourse, that he had heard that esquire Thynn had spoken some abusive language of him, and he would fain know what the consequence of this would be if he should call him to account about this business? And he named the Swedish envoy to me: And I saw his desire was to know his opinion about the business, what the consequence of it would be. So I spoke to the Swedish envoy, and he gave me this answer, That if the count should any way meddle with esquire Thynn he would have but a bad living in England; but what the law would say in that particular case he could not answer, but he would enquire, and afterwards would give me an account; but I never spake with him after.

Sir *Fr. Win.* I ask you, because you have been formerly examined in another place, about this matter; do you remember any thing that ever you heard the count speaking of fighting with Mr. Thynn?

Hanson. Count Coningsmark spoke to me in the German language; I spoke to the Swedish agent in French; and when I was before the king and council I spoke in English; therefore I desire no evil construction may be made of it. I cannot remember the count spake of killing or duelling. On the contrary I can swear for count Coningsmark this, That I am confident he never told me that he had resolved or would fight with Mr. Thynn or would call him to account, but if he should call him to account, what would be the consequence of it.

Sir *Fr. Win.* Call him to account about what?

Hanson. The count in familiar discourse with me, did tell me, that he had heard esquire Thynn had spoke abusively of him.

Sir *Fr. Win.* How had he spoken abusively of him?

Hanson. He reflected upon his person and upon his horse.

Mr. *Williams.* Was there any thing in that message about marrying my lady Ogle?

Hanson. That was the last part of the question, That if he should meddle with esquire Thynn, what the consequence might be, if the laws of England would be contrary to him in the hopes or pretensions he might have to my lady Ogle.

Mr. *Williams.* You mince your words mightily; pray remember yourself; Did he speak of killing Mr. Thynn, or that Mr. Thynn should be destroyed?

Hanson. No, his phrase was, if he should have an advantage of him, when he should meddle with him, or call him to an account, what the consequence might be; I can say this upon my conscience.

Sir *Fr. Win.* Sir, you are in a place where you are sworn to speak the truth, the whole truth, and nothing but the truth: What relation have you to count Coningsmark's family?

Hanson. I have no relation to the family at all.

Sir *Fr. Win.* Are not you governor to the young count?

Hanson. The countess has given me her younger son, for me to be his companion in his travels.

Sir *Fr. Win.* Sir, I ask you a plain question, let it lie at your own door, if you will not tell the truth; had you any conversation with count Coningsmark, wherein he did desire you to ask advice of the Swedish envoy or resident here, about duelling Mr. Thynn, or in case he should kill Mr. Thynn, or upon any such account?

Hanson. My lord, I say this was spoken in several languages, by the Count in Dutch, by myself to the envoy in French; and I do know I swore before the king and council, but I cannot lay this to count Coningsmark's charge, for then I must forswear myself.

Sir *Fra. Winn.* Sir, you can answer me all my questions in English, if you please, what the discourse was.

L. C. J. Pray, Sir, thus: what was the discourse, as near as you can remember it, between count Coningsmark and you, relating to Mr. Thynn.

L. C. J. North. Tell the whole, Sir, for you are bound to tell the whole indifferently.

Sir *Fra. Winn.* And pray remember what you swore in another place.

Hanson. The count sent to me a note, that he had a mind to speak with me, and he entertained me with a familiar discourse about his travelling, and about the settling of his business, and thereupon he fell upon other discourse about Mr. Thynn, and, not to mistake, having had time in my own chamber, I have put it down in writing, to satisfy my lord and all this honourable Court, what I can say about this matter.

[Mr. Hanson reads——'Tis very hard to give a true account.]

L. C. J. Read it to yourself, if you will, and tell us the substance.

Hanson. If my words may not turn to the prejudice of my lord count Coningsmark; but this is the substance of the thing. My lord count Coningsmark did tell me in a familiar discourse, that esquire Thynn had spoken some reflecting words upon him; he did desire to know if he did call him to account, whether in this case the laws of England might not go contrary to his design, in his pretensions that he might have upon my lady Ogle. And in that familiar discourse, he seemed to think that monsieur Lienburgh could give him advice. In a little while afterwards, I was paying my respects to the envoy, and reflecting upon the Count's conversation, I spoke to him about this business, and his answer was this; he told me, that if he should meddle with Mr. Thynn, he would have no good living in England: but as to the particular question, what the consequence of the law might be, he did not know, but would enquire and tell me; but I never asked him any question about it afterwards. And if my conversation with this count, or with monsieur Lienburgh, should turn to the count's prejudice I should be answerable for it to God and my own conscience, all the days of my life. I desire Mr. Thynn's blood might be revenged, but I desire also that innocent blood may be spared.

Sir *Fra. Winn.* Pray, Sir, will you look upon that paper; you signed it.

L. C. J. North. Only to recollect your memory.

[Then he was shewed his Examination before the council.]

L. C. J. Now you have read it over; that there is under your own hand? Do you now again deliver the substance of your discourse you had with count Coningsmark, as you will stand by it.

Hanson. I see that there are expressions in this paper.

L. C. J. Speak not what is in that paper, but what discourse (as near as you can) you had with count Coningsmark.

Hanson. My discourse with count Coningsmark was this: in a familiar discourse amongst other things, he spoke, that he heard esquire Thynn had affronted him, I do not know upon what subject, but I believe it was words reflecting upon him and his horse; he did not tell me that he desired me to go, nor did he give me any positive charge to go to the Swedish envoy, but by the discourse I had with him, I did understand that he was desirous to have his advice; I thought his inclinations were, that I should go and ask his advice; I did not go on purpose to do the message, nor did I receive any order that can be called a message, in my life, to my remembrance; but when I came to pay my respects in a familiar discourse, I did propose this to the envoy; what might be the consequence, if the count should call Mr. Thynn to account; and he told me the same answer that I have already told you. Now this I desire only to consider, that it was spoken in divers languages; and if a man should write down my expressions now, as they came from me, they would upon reading, perhaps, appear not so well; so if these expressions of mine should turn to count Coningsmark's prejudice, as that I should swear that this phrase of killing or duelling was used, or that ever count Coningsmark told me that he resolved to call, or that he would call him to an account, I might do him wrong, perhaps; but if he should call him to account, what might be the consequence of it.

Sir *Fra. Win.* I would not entangle you, but only I would seek after the truth. I do not ask you positively, whether he did bid you go to ask advice of the Swedish envoy, that he did resolve so and so; but did he discourse it thus, if he should duel him, or fight him?

Hanson. As I am before God Almighty, I cannot say I heard such expressions.

Mr. *Williams.* Pray, Sir, you confess you acquainted the envoy with it?—*Hanson.* Yes.

Mr. *Williams.* Did you bring the Envoy's answer to the gentleman, or no?

Hanson. If I should be upon the gospel, I am sure I cannot exactly tell what was the expression.

L. C. Baron. What was it that you discerned he doubted, if he did call Mr. Thynn to account?

Sir *Fra. Winn.* He spoke in relation to a marriage, pray what was it?

Mr. *Williams.* What did that if relate to?

Hanson. If he should ask him satisfaction about it, having heard that he had spoken abusive words of him.

Sir *Fra. Win.* What then was to follow?

Hanson. If he should call him to account then how the laws of England might do in this point.

Mr. *Williams.* To whom?

Hanson. To the count.

Mr. *Williams.* What should befal him?

Hanson. Whether the law should be contrary to him in the design and proposals he might have concerning the young countess of Ogle.

Mr. *Williams.* Well, I see you will give no reasonable answer to that; but now when came the Polander over into England?

Hanson. I cannot say positively I can tell when he came.

Mr. *Williams.* But when did you see him first?

Hanson. Upon the Friday he came and asked me for the count at M. Faubert's academy. Now the young count Coningsmark's chamber and mine joins together, next to one another, and there came a man with him, I do not know his name, but if I see the man I know him.

Mr. *Williams.* You say the Polander came over on Friday.

Hanson. He came to me on Friday.

Mr. *Williams.* And he came to you to the French academy, to enquire for count Coningsmark?—*Hanson.* Yes, he did so.

Mr. *Williams.* Had he any letters?

Hanson. Yes, he had two letters.

Mr. *Williams.* From whom, and to whom?

Hanson. I asked him if he had any letter for count Coningsmark, and he said no; but he told me he had two letters, and the one was to the count's secretary, and the other was to the count's steward in London. So I gave him back his letters, and asked him whence he came? He told me he was just come into England. I asked him whether he had been a great while at sea? And he told me yes; and that it was stormy, and he had like to have been cast away: said I, I hear you are expected, therefore have you paid your lodging? No, said he; then, said I, go and pay your lodging, and come to me in the morning early.

Sir *Fra. Winn.* You say you heard he was expected, pray who expected him?

Hanson. The count; for he had spoken formerly twice of the Polander, and in the great storm thought he had been drowned. To the best of my remembrance, I have heard the count speak twice of this Polander.

Sir *Fra. Winn.* Of this man?

Hanson. I suppose it is the same

Sir *Fra. Winn.* You say you saw him on Friday?—*Hanson.* Yes, I did.

Mr. *Williams.* When did he speak of the stormy weather, and that he was afraid the Polander might miscarry?

Hanson. About 12 or 13 days before.

Mr. *Williams.* Now say as near as you can what the count said.

Hanson. He said the Polander was a mighty able man, and understood horses; and the count had a mind to buy English horses, and intended to have had this Polander as a groom, to dress them after the German way, and no man was abler than the Polander to do it; and when he spoke of it, I went once to the

'Change, and enquired whether the ship was lost?

Sir *Fra. Winn.* By whose direction did you go to enquire whether the ship was lost?

Hanson. I had no direction, but only count Coningsmark's speaking about it.

Sir *Fra. Winn.* He seemed to be concerned at it, did he?

Hanson. Yes, he was afraid that the Polander would be drowned.

Mr. *Williams.* You say you directed him to clear his quarters?—*Hanson.* Yes, I did so.

Mr. *Williams.* Did you see him again the next day?

Hanson. Yes, he came the next day.

Mr. *Williams.* Was he the next day in company with the count, or no?

Hanson. I brought him to the count.

Sir *Fra. Winn.* Where?

Hanson. It was a little before noon; because I went the back-way, and left him at the count's lodging.

Mr. *Williams.* Did you leave him with the count?—*Hanson.* Yes, I did.

Mr. *Williams.* Pray as long as you were there, what passed between the count and the Polander?

Hanson. I remember very well what passed between the count and him, for I have thought of it. He spoke to him, and called him Thou, as to his servant, and asked him where he had been all the while? And he answered, he had been at sea, and tossed up and down.

Sir *Fra. Withens.* Pray what directions had you given about a sword for that Polander?

Hanson. I went to the count's lodgings, and being desired by him to stay, I desired he would excuse me, for I could not stay, because I was to go about another business; he told me the fellow was all naked, and he had no man to send to buy him a riding coat; I told him I would very willingly and heartily do it. And after I had dined I went to an house near the Hay-Market, and bought a riding-coat, and brought the riding-coat to the count's lodgings. I delivered it to the count. Then the count told me his man had never a sword, and I asked him how much his lordship would please to bestow on a sword, he told me a matter of 10*s.* or thereabouts; I told him I did not know where I should get such a sword, nor how to send for it, because I was to meet his brother; but I withal said, it is no matter for that, I will take care you shall have it this evening; I went into St. Martin's-Lane, but could not find ever a sword worth a groat. Then I went as far as Charing-Cross to a cutler whom I knew, so I told him, Sir, said I, I have a commission to bestow 10*s.* upon a sword for a servant, therefore, said I, I leave it to your discretion, use my friend well, and use yourself favourably too. I asked him when I should have the sword, he told me in the evening; I told him I would call for it when I came from the play, where I was to be with the count's brother. When I came back with the young count Coningsmark from the play, I called for the sword, but he told me it was not ready. I seemed to be a little angry, and told him that it was strange, a gentleman could not get a little sword ready for him in an whole afternoon. Well, Sir, said he, pray do not be impatient, I will send you the sword, and afterwards he sent it to the academy, and I afterwards sent the sword to count Coningsmark's lodgings.

Mr. *Williams.* Pray had you this direction for the sword after you had brought the Polander to the count, or before?

Hanson. Count Coningsmark did never give me any direction or charge to buy a sword for him, but I did offer my service, if he pleased, because he said he had no body to send.

Mr. *Williams.* Sir, you do not know the question, or you won't apprehend it; pray, when had you this direction from the count to buy this sword?

Hanson. On Saturday in the afternoon.

Mr. *Williams.* When was it you brought the Polander to the count?

Hanson. In the morning.

Sir *Fra. Winn.* Pray let me ask you another question. When was it you first heard Mr. Thynn was killed?

Hanson. I heard it, I believe, about eight o'clock in the evening on Sunday.

Sir *Fra. Winn.* Had you any discourse with the count about the murder?

Hanson. Yes, I had.

Sir *Fra. Winn.* Pray tell what that discourse was?

Hanson. I was at Whitehall till ten of the clock, and then I went to the count; but I desire this may not be taken as an extraordinary visit, because I used to go to him on Sundays in the evenings, and those three Sundays before he was taken, I used to come to him in the evening, after I had been to Whitehall. When I came into his lodgings I found him in his night-cap, and his night-gown; he asked me what news, I told him I could tell him great news, and that was of the killing of esquire Thynn, who was shot in his coach: The embassador of Savoy had told me all that he had heard about it, and I told it him. After I had spoken of this business, he asked me where his brother was; I told him his brother was at the duke of Richmond's. And after some discourse I went away.

Sir *Fra. Winn.* When you told him of the murder of Mr. Thynn, did he make no answer, nor say any thing about it?

Hanson. He did not make me any answer, by which I could conclude that count Coningsmark was any way concerned in the business.

Sir *Fra. Withens.* Pray, Sir, I ask you upon your oath, the count is a man of great quality himself; when you told him of such an horrid murder, what did he say nothing about it?

Hanson. He asked me several questions what the people did say, but I would not make any mistake.

Sir *Fra. Winn.* Tell all he said, Sir, about it.

Hanson. I told him the greatest news I had was, the killing of Mr. Thynn; and I told him who brought the news; and I told him the court were angry at it, that such an accident should happen; and I said it was an Italian trick, not used in England.

Sir *Fra. Winn.* What said he then?

Mr. *Williams.* Pray do you remember what he said?

Hanson. What I have answered now. He made me such questions upon this story as I have told you.

L. C. J. Let him explain himself: Pray, as near as you can, relate what discourse you had with count Coningsmark that Sunday night, after you came to him and told him of the murder.

Sir *Fra. Winn.* What did he say to you?

Hanson. I will tell you, my lord; the count was surprized as every man would be, to hear of so sad an accident, and so the count asked me what the people said, so I told him what I heard at Whitehall; I cannot call to my memory all the particulars; but I said the king was heartily sorry, and all the court, for so sad an accident, and I must wrong myself, or count Coningsmark, if I should undertake to relate exactly what passed, for I cannot remember it.

Mr. *Williams.* But you said just now, that you told the count it looked like an Italian trick, not used in England.

Hanson. Yes, I did so.

Mr. *Williams.* What did he reply to that?

Hanson. Not a word.

Mr. *Williams.* Did he mention any thing of fortifications to you then?

Hanson. Yes, he gave me a plan, or a draught of a fortification done with his own hand, and that was all the discourse.

Mr. *Williams.* So then he diverted the discourse to the business of fortification.

L. C. J. The evidence is heard; what it is that he ended all the discourse with, shewing him a paper of fortifications.

Sir *Fra. Winn.* But this he does say, he asked him what the people did say of it?

Hanson. For my life, I dare not say I remember any more than I have told.

L. C. J. Look you, Sir, now will you in French deliver this for the benefit of those jurymen that don't understand English.

Mr. *Williams.* We pray, my lord, that our Interpreter may do it.

L. C. J. When a man can speak both languages, he needs no Interpreter, he is his own best Interpreter.

Mr. *Williams.* My lord, I will tell you why I ask it; there is a great deal of difference, I find, where you examine a man with the hair, and where you examine him against the hair; Where you find it difficult to make a man answer, you will pump him with questions, and cross-interrogate him, to sift out the truth: now if you leave this man to the interpretation of what he hath said himself, he will make a fine story of it, and we shall be never the wiser.

L. C. J. You may examine him in French, if you will.

Mr. *Williams.* And I understand none but Pedlar's French.

Sir *Fra. Winn.* The truth of it is, what your lordship says cannot be opposed regularly; but I do appeal to your lordship, and all the judges, and all the court, whether this man does answer like an ingenuous man; you see he shifts.

L. C. J. I do not see it, nor do I believe any see he shifts in any thing you ask of him; either he tells you what the question is, or the reason of it; how far that is a reason, is left to the jury to consider.

Sir *Fra. Winn.* Certainly it can do no hurt to have an Interpreter.

L. C. J. North. My lord, if there be two ways to take, 'tis best to take that which will give satisfaction to all persons; let him be asked by the interpreter, what questions the counsel would have answered, and then let him tell his answer in French.

L. C. J. If that be liked better, let it be so. Mr. Craven, can you tell the substance of the evidence that this gentleman hath given?

Mr. *Craven.* No, I cannot, his evidence has been so long, and so many cross questions have been asked.

Sir *Fra. Winn.* I would spare your time——

L. C. J. But this is the way to spend our time.

Sir *Fra. Winn.* I know your lordship does not value time in such a case as this, but you would have the truth found out.

L. C. J. You must repeat first the discourse you had with count Coningsmark.

Sir *Fr. Winn.* My lord, we will reduce it to two or three questions. Mr. Craven, will you please to ask him what discourse he had with count Coningsmark.

Mr. *Craven.* He says, the discourse he had with count Coningsmark about the Polander, was, that he came over as a groom to serve him to look after his horses; that he had occasion for several English horses, and English servants to look after them as grooms; and among the rest of his grooms, he intended the Polander should be one, to dress his horses after the German way.

Sir *Fr. Winn.* So far he goes as to that, That the Polander came over to serve the count.

L. C. J. Look you, Sir, does not he tell you, the count had a purpose to buy horses here?

Mr. *Craven.* He says there was a discourse about bills of exchange of 7,000 pistoles to buy horses.

Sir *Fr. Winn.* Pray then will you ask him, what discourse he had with count Coningsmark about the death of Mr. Thynn, and what the consequences in law might be?

Mr. *Craven.* My lord, he says that the discourse with count Coningsmark, concerning the Swedish agent, was, That in case he should ask satisfaction of Mr. Thynn, for the affronts that he had given him, not understanding the

customs of the nation, if he should call him to account, what prejudice it might be to him; for he did not hear, he says, that count Coningsmark designed any thing, or resolved upon killing him, or any thing of that nature; but whether if he should call him to account, what the laws of England might be.

Mr. *Williams.* Call John Wright.

Sir *N. Johnson.* My lord, the count desires to know if he may be permitted to make his defence against these witnesses?

L. C. J. No, he is not to make his defence now. But pray tell him, if my lord have a desire to ask any questions of this witness, he may ask what he pleases.

L. C. J. North. Let the question be put to the interpreter, that we may know what the question is before the witness gives an answer.

Mr. *Craven.* He asks him, if he has not seen him oftener in his lodgings undressed than dressed, and whether he was not to take physic from his physician?

Hanson. I do not remember, that in all the time I saw count Coningsmark, I saw him dressed four times in his coat, I cannot say I remember three times in all. The first time when he came, he was in a campaign coat; but all the time he was in his lodging, as I remember, he was in his night gown and cap. As to the other part of his question, whether I heard that he took physic? I say this, when I saw count Coningsmark first at his lodging, when I came to him, on the Sunday evening, I was told the count was in bed; it was late, but I ventured to go into his room, and sat a quarter of an hour there; and afterwards the doctor came in, Dr. Frederick, I saw him oftentimes at his lodging; and at the same time the young count was sick of an ague; And when he came one evening, to see the young count, I asked him what was the distemper the count had? The doctor answered me, that he had not told any body that the count was sick, or what he was sick of, but he hoped in God, in a short time he would be recovered.

Mr. *Craven.* He asks him if he gave any positive order, that he should go of any message to the Swedish envoy?

Hanson. This I have answered before, and I say now, if this discourse that I had with the Swedish envoy, turn to the lord count Coningsmark's prejudice, it would grate upon my conscience all my life: Count Coningsmark never gave me any positive order to carry any message; but I did gather, by his discourse, that the count might be desirous to know the envoy's opinion about this question; and therefore I thought, the count desiring it, I would do it to please him, rather than by order. But I do not know that ever the count had a mind to give me such an order, but I did it voluntarily.

L. C. J. In plain English, did he ever reef you to go to the Swedish envoy?

Hanson. No, my lord, he never did direct me.

L. C. Bar. How came you to choose a foreigner or know what the laws of England are?

Hanson. I thought it would please the count to know his opinion.

L. C. Baron. But how came you to chuse a foreigner, I ask?

Hanson. He has been nineteen years here in England, and sure he should know.

Mr. *Craven.* My lord, he asks him if ever he told him that he had a design to fight Mr. Thynn, or to do him any prejudice, or send him a challenge?

Hanson. My lord, I am upon my oath, and this I say, I speak it before God and the court, count Coningsmark did never tell me that he had any mind, or did resolve to call esquire Thynn any ways to account.

Mr. *Williams.* Call John Wright. [Who stood up and was sworn.]

Sir *Fr. Wynn* We shall ask him but a question or two, my lord.

Mr. *Williams.* Pray tell me the time when this Polander came into England; that man at the bar?

Wright. He came the tenth day of this month.

Mr. *Williams.* Pray what ship did he come in? Where did you first meet with him?

Wright. Here in town.

Mr. *Williams.* Where was it?

Wright. At the Cross-keys in Throgmorton-street.

Mr. *Williams.* Pray, when you first saw him, what did he ask you?

Wright. He asked me where count Coningsmark's lodgings were? I told him I thought he was at Oxford, I meant the young gentleman, for I did not know the other was in town; but I went and enquired, and they told me it was at Faubert's academy.

Mr. *Williams.* Whither went you with the Polander then?

Wright. I went to my lord's lodgings.

Mr. *Williams.* What lord?

Wright. The young count's lodgings.

Mr. *Williams.* Well, and what then?

Wright. And I came to Mr. Hanson, and he did deliver a letter to Mr. Hanson, and I staid there about half an hour, or thereabouts.

Mr. *Williams.* When was this?

Wright. Upon Friday the tenth day of this month.

Mr. *Williams.* How long was Mr. Hanson and the Polander together?

Wright. About half an hour.

Mr. *Williams.* What said Hanson to him in your presence?

Wright. Mr. Hanson said nothing.

Mr. *Williams.* Was there any thing said about going back and paying his lodging, and coming back?

Wright. Mr. Hanson came down to me, and told me he was glad to see me, and bid me take the Polander back with me, and bring him to him to-morrow betimes, for he must dispatch him about his business.

Sir *Fr. Winn.* Then he said nothing to the Polander?

Wright. No, but to me.

Sir *Fr. Winn.* Well, what did you do the next morning?

Wright. I came to him the next morning, to this Polander, and he took his things with him, which was a sea-bed that he had, and a gun with a wheel-lock, and some other things.

Sir *F. Winn.* And whither did you bring him?

Wright. I brought him to the upper end of the Hay-market, M. Faubert's school.

Mr. *Williams.* To what place did you come in the morning, say you?

Wright. Sir, if it please you, I brought him within a door or two of Mr. Faubert's the horse-master, that teaches to ride the great horse; for he did desire that we might go to an house hard by, because he would not carry his carriage to my lord, he had a sea-bed, a portmantle, a gun and other things; and so I brought him to an house, and there I called for a pot of ale; and he put down his things and went out, I thought he had gone to make water, but within a little while after returns again, and Mr. Hanson comes in with him: He asked me why I did not come sooner; I told him I had some other business, I was with some French Merchants to look upon some goods. So he bid the Pole pay me for my trouble, and take up his things, and go along with him; and he did do so, and I never saw the Pole afterwards

L. C. J. You that are the interpreters, repeat what he hath said to the jury. (Which was done.

Sir *Fr. Winn.* We have done with this man, the use we make of him is to follow this Polander, and we shall bring him to the count by and by. Call Dr. Frederick Harder. (Who was sworn.)

L. C. J. The Doctor understands English, don't he?

Sir *Fr. Winn.* Yes, we are told he does.

Mr. *Williams.* How long have you known the count that stands there at the bar?

Dr. *Harder.* I have known him a good while, it may be this four or five years. I have known him four or five years.

Mr. *Williams.* How long have you known capt. Vratz?

Dr. *Harder.* About a year and a half, or two years.

Mr. *Williams.* Was my lord and captain Vratz acquainted then?—*Harder.* Yes.

Mr. *Williams.* Was he in employment under my lord, was he in the count's service?

Harder. He was with the count, but whether he was his companion I cannot tell.

Mr. *Williams.* Did he live with the count?

Harder. Yes.

Mr. *Williams.* Did captain Vratz, when the count came last over into England, come over with him?

Harder. Yes, by my knowledge.

L. C. J. Do you know it or not?

Harder. Captain Vratz came to me, and told me, my lord desired to speak with me, and I went with him to my lord.

Sir *Fr. Winn.* Was that the first message you received from the count?

Harder. Yes, it was.

Mr. *Williams.* How long was that ago?

Harder. The same day the Morocco embassador did exercise in Hyde-Park.

Sir *Fr. Winn.* How long is that ago?

Harder. About a month ago.

Sir *Fr. Winn.* What was that his first lodging after he came last into England?

Harder. It was in the Hay-Market.

L. C. J. Was it a corner house, as the other witness saith, or not?

Harder. Yes, it was.

Mr. *Williams.* Was the count a private lodger there?

Harder. He lay in his bed when I came to him; he came as a traveller privately.

Mr. *Williams.* Did he go by his own name, or another name?

Harder. Nobody did question him about his name, but when I did come to him, I did discourse with him about his body.

Mr. *Williams.* Pray, Sir, thus: You went often to visit him, pray did you enquire for him by his own name, or any other name?

Harder. He desired that he might be private, because he was to take some medicines, and he would not have it known.

Mr. *Williams.* Now, Sir, I would ask you, did you observe him to be in any disguise? Did he wear a perriwig, or how?

Harder. He had a perriwig.

Mr. *Williams.* Was it a fair perriwig, or what colour?

Harder. It was brown or black.

Sir *Fr. Winn.* Sir, was he in a disguise, or no?

Harder. He had his own clothes, but he had a perriwig.

Sir *Fr. Winn.* Pray what name did he go by, his right name, or any particular name?

Harder. In the first beginning I gave him no name; but, said he to me, if any body ask you about me, I would not be known; for if they know that I lie privately thus, they will think I ail some ill distemper, therefore I would have you call me by the name of Carlo Cuski.

Mr. *Williams.* Were you with him, pray Sir, upon the Sunday morning that Mr. Thynn was murdered?

Harder. I cannot certainly tell, but I was with him in the afternoon.

Sir *Fr. Winn.* Pray call yourself to mind, Sir.

Harder. I cannot certainly tell.

Sir *Fr. Winn.* What time were you with him in the evening?

Harder. At nine o'clock, at night or thereabouts.

Mr. *Williams.* Did you receive any letter from capt. Vratz at any time?

Harder. I did upon Saturday morning, the Saturday before Mr. Thynn was murdered.

Sir *Fr. Winn.* Have you that letter about you?—*Harder.* No.

Sir *Fr. Winn.* What was in the letter?

Harder. He desired me to go to the count,

who had a desire to speak with me. I came there, and had some speech with him about his indisposition. I told him he had better stay till next day, before he took physic, because it was cold weather. And after that, went with the Polander to my lodging, and the captain's man came in, and then said, here is a man that will direct you to captain Vratz's lodging; which I did not know.

Mr. *Williams.* Look you, Sir, you say you went to the count, did you shew the count that letter from capt. Vratz, or no?

Harder. The count saw it.

Mr. *Williams.* Then hear a little, When was it you shewed the letter to the count? Was it Saturday or Sunday?

Harder. It was Saturday.

Mr. *Williams.* Now, was the Polander then in the count's lodgings or no?

Harder. Yes, he was.

Mr. *Williams.* Was there any discourse about him then?

Harder. I had never seen him in my life.

Mr. *Williams.* But was there any with the count?

Harder. No, not at all.

Sir *Fr. Winn.* Then, upon your oath, I ask you once more, Was the Polander ever in company with you and my lord at any time?

Harder. No.

Sir *Fr. Winn.* Upon the Sunday, upon your oath?—*Harder.* No.

Sir *Fr. Winn.* Nor the Saturday evening.

Harder. No, I have not seen him since that morning when the captain's man took him along with him to his master.

Mr. *Williams.* Pray, how came the Polander into your company on Saturday morning?

Harder. I had him from my lord's that morning.

Mr. *Williams.* Then my lord and the Polander were together?

Harder. No, they were not together.

Mr. *Williams.* Was the Polander in my lord's lodgings?

Harder. Yes, the Polander was below stairs.

Mr. *Williams.* And did you take him from the lodging?—*Harder.* Yes, I did.

Mr. *Williams.* How long did he continue with you?

Harder. Not at all, I went home with him.

Mr. *Williams.* Had you no discourse with him?—*Harder.* No, none at all.

Mr. *Williams.* Where did you part with him?

Harder. I brought him to my house; and when he came in a-doors, the captain's man being there, I told him there was a man would show him the captain's lodgings; and he took him away along with him.

Mr. *Williams.* You say, the captain's man had the Polander from you; pray name that man?

Harder. I cannot tell his name.

Mr. *Williams.* Was his name Berg?

Harder. I believe it was.

Sir *Fr. Winn.* You say you delivered a letter from captain Vratz on Saturday morning to the count?—*Harder.* Yes.

Sir *Fr. Winn.* Did the count read the letter, and tell you the contents of it?

Harder. No, it was not sealed.

Sir *Fr. Winn.* Did not you know the contents of it then?—*Harder.* No.

Sir *Fr. Winn.* Pray, when you delivered the letter from captain Vratz to the count, what did the count say to you?

Harder. The letter was not written to the count, but it was writ to me.

Mr. *Williams.* What was the reason that you shewed it to him then?

Harder. I received a letter from captain Vratz, that the count desired to speak with me; and afterwards I was desired to direct this man, the Polander, to captain Vratz; and so I directed him to captain Vratz, and nothing more I know.

Sir *Fr. Winn.* Well, Sir, one thing more and I have done with you; for you will not, I see, give a reasonable answer: pray, when the Polander came along with you from the count's, did you observe he had any thing about him?

Harder. He had a great campaign coat.

Sir *Fr. Winn.* Did he seem to have any thing under it?

Harder. He had a portmantle under it, I think, or some such thing.

Mr. *Craven.* My lord, the count desires to ask him some questions.

L. C. J. Let him ask what questions he will.

Mr. *Craven.* My lord, he asks him whether he does not remember, when he first came to town, he had his body full of spots?

Harder. Yes, my lord, when he came from Tangier, he had spots over all his breast; and it was feared they might get up higher towards his neck, and endanger him very much.

Mr. *Craven.* He says, if my lord pleases, he will shew it openly.

L. C. J. No, there is no need of that, doctor. Did you give him physic for that?

Harder. Yes, for that I did administer physic to him.

Mr. *Craven.* He says, my lord, he overheated himself in riding to Tangier, thinking to do the king and the nation service, and the heat broke out in spots over his breast.

L. C. J. The doctor knows nothing of that.

Mr. *Craven.* He asks whether the doctor was not desired by him to cure him? whether he did not tell him he would cure him of those spots?

Harder. He desired me to administer physic unto him.

Mr. *Craven.* He says he went to Strasburgh, and when he came back he was in the same condition he was in before; and he asks whether the doctor did not undertake to cure him?

Harder. Yes I did administer physic unto him; and this my own man can testify and be witness of; because my lord bid me take care that he might be private, for he would not have

it known that he did take physic; but I told my man, said I, it is my lord Coningsmark, and therefore pray take care of him, and see that the physic be made very well up.

L. C. J. You seem to intimate as if he lay private to take physic; pray let me ask you this question, did you give him physic all this time?

Harder. Not always purging physic, but some sort of physic all the time.

L. C. J. What every night and morning?

Harder. Yes, every day.

Mr. *Craven.* The count desires to ask him where he was that unhappy day this business was done?

Harder. I found him that day ill, lying down upon the bed, I asked him how his physic had worked: he told me he was afraid he had got some cold; and indeed I found him very much disordered, and I went home and fetched him some physic to take that night.

L. C. J. By the oath you have taken, was there any other occasion, or had you any other discourse with him, when you came on the Sunday night but concerning his physic?

Harder. My lord, I will tell you the truth; I never heard the count speak any word in my life, that he had any concern, or design of any quarrel at all, nor any discourse, but about the administration of his physic.

L. C. J. Let me ask you this question, for they desire it here, what was the occasion? and whether you know the occasion, why my lord altered his lodgings so often?

Harder. The first occasion was this; because it was in the Hay-market; and his man said it would be quickly known if he did continue there; so he would take another lodging, which was in Rupert-street, and there he lodged three days; but the chimney did so smoke, that my lord could not stay, because he could have no fire in his chamber, and the weather was very cold, for it did snow, and therefore I told my lord, it was not so proper for taking of physic: thereupon he desired me to take him another lodging in Queen-street, which I did look about for, but it was not ready, so he had a lodging taken for him in St. Martin's-Lane, where he lodged till he went away.

Mr. *Williams.* Pray, Sir, the physic that you gave the count, did it require his keeping within doors? might not he walk abroad with it, upon your oath?

Harder. It did require him to keep in.

Mr. *Williams.* Pray then, how comes it to pass that the count so suddenly could go by water to Gravesend?

Harder. I do not know what was done afterwards.

Sir *Fr. Winn.* I would ask you one question and I would fain have you give me a fair answer to it, what became of the letter that captain Vratz writ to you, and you shewed to the count?

Harder. It remained there upon the table.

Sir *Fr. Winn.* Did not you keep your own letter?

Harder. It was not of any concern.

Sir *Fr. Winn.* If the letter were written to you, it is not so long since but you can tell us the contents of it; pray, what were the contents?

L. C. J. Can you remember what were the contents?

Harder. He desired me to go to count Coningsmark, who would speak with me, and that I would give his man an answer when I came from him.

Sir *Fr. Winn.* But what were you to go to the count to do?

Harder. Nothing; but the count discoursed to me about his own body and indisposition.

Sir *Fr. Winn.* But captain Vratz was no physician; why should he send you a letter to talk about physic?

Harder. It was nothing but my lord would speak with me.

Mr. *Williams.* We need not trouble ourselves with this fellow, he confesses he found the Polander in the count's house.

Sir *Fr. Withens.* Pray, Sir, let me ask you, who was with the count on Sunday night.

Harder. Mr. Hanson was there, I think

Sir *Fr. Withens.* Who else?

Harder. The captain came in, and went out again.

Sir *Fr. Winn.* What time of night was it that Vratz came into the count?

Harder. It was at the same time that I was with him.

Sir *Fr. Winn.* That he swears to be about nine o'clock: was it after Mr. Thynn was killed?—*Harder.* We had not heard it.

Sir *Fr. Winn.* Sir, was it nine of the clock?

Harder. Yes, it was.

Mr. *Williams.* You say you found the Polander at the count's lodgings?

Harder. Yes, upon Saturday morning.

Mr. *Williams.* Then he came along with you from the count's lodgings?

Harder. Yes, to my house.

Mr. *Williams.* And you parted with him there?

Harder. Yes, the captain's man took him away with him.

Mr. *Williams.* That was Berg, was not it?

Harder. Yes.

Then this Evidence was interpreted to the Jury.

Mr. *Craven.* He desires the jury should know what the doctor said about his sickness.

L. C. J. Let it be repeated to them.

Mr. *Craven.* He desires to know whether he may not speak it in French himself.

L. C. J. No, the Interpreter must do it; (which was done.) My lord, would you ask any more questions of the Doctor?

Count *Con.* No more questions but them I have asked.

Sir *Fr. Winn.* Call Thomas Howgood. [Who was sworn.]

Mr. *Williams.* Pray, did you sell any sword to the count?

Howgood. I sold a sword to the governor; a broad horseman's sword.

Mr. *Williams*. When was this?

Howgood. On Saturday was fortnight.

Mr. *Williams*. What time was it that he bespoke it?

Howgood. He bespoke it half an hour after 6 at night.

Mr. *Williams*. What did he say to you when he bought it?

Howgood. He said he would call for it about 8 o'clock at night, when he came from the play.

Mr. *Williams*. What kind of sword was it?

Howgood. An horseman's sword, as broad as two fingers, such as the gentlemen of the guards wear.

Sir *Fr. Winn*. When he came for the sword, what said he?

Howgood. He was angry it was not done, and I told him that I would send it to him quickly.

Sir *Fr. Winn*. Where was it sent?

Howgood. To the Governor's lodgings at the academy.

Mr. *Williams*. Now, my lord, we call several persons that were privy to the concealing of this gentleman, that can give you a better account, Richard Hayes and Robert French.

[*Robert French* appeared and was sworn.]

Sir *Fr. Winn*. Pray will you tell my lord what you know of the count's concealing himself and changing his habit.

French. I never saw him, my lord, before I came here in court; but it seems he did lodge in my house 3 or 4 days.

Sir *Fr. Winn*. How long is it since?

French. Between 3 weeks and a month ago, just 10 days before the murder.

Sir *Fr. Winn*. What name did he go by then?

French. I did not know his name.

Sir *Fr. Winn*. Who used to resort to him at that time?

L. C. J. You say, Sir, you saw him not, what company did come to him?

French. I did not see him indeed.

Sir *Fr. Winn*. Pray did captain Vratz come to him to your house?

French. He lodged with him all the time.

Sir *Fr. Winn*. You say you know capt. Vratz was there?—*French*. Yes.

Mr. *Williams*. Did Dr. Harder use to come to him?—*French*. Yes, several times a day.

Mr. *Williams*. What name did he enquire for him by?

French. The Doctor took the lodging and it was for a stranger; I heard no name at all.

Interpret. My lord desires to know, whether you did not suspect he took physic in the house?

French. I suppose the Doctor did give you an account of that; I don't know that he did.

Interpret. Did not your maid know of any such thing?

French. My maid is here, she will give you an account.

Sir *Fr. Winn*. Call Ann Prince: (Who was sworn.) Pray do you acquaint my lord what you know of count Coningsmark; whether ever you saw him at your master's house in the Hay-market?

Prince. Yes, he lodged there.

Mr. *Williams*. When?

Prince. He came thither last Friday was a month.

Mr. *Williams*. How long did he stay there?

Prince. 'Till Wednesday.

Mr. *Williams*. At that time, who used to frequent his company?

Prince. I know nobody but the doctor that used to come to him.

Mr. *Williams*. What name did he go by?

Prince. No name at all, as I know of; they did not ask for him by any name.

Mr. *Williams*. Did the captain use to come to him?

L. C. J. Her master says he did lie there.

Prince. Yes, he used to lodge there.

Mr. *Williams*. Did the captain give him any physic?

L. C. J. No, but the doctor did.

Sir *Fr. Win*. He only asks a merry question.

L. C. J. But we are now upon the life and death of a man, pray let us have those questions asked that are serious, not such light things as are permitted in ordinary cases.

Sir *Fr. Win*. Now, my lord, we will call Francis Watts.

Mr. *Craven*. Maid, my lord asks, whether he did not take a vomit in your house?

Prince. Not that I know of.

Then *Francis Watts* was sworn.

L. C. J. How old is the child?

Watts. 15 years old last Christmas.

L. C. Baron. Ask him whether he understands what an oath is?

Mr. *Thynn* He was sworn before the king and council.

L. C. B. If he were sworn before the king and council, he may give evidence here sure.

Sir *Fr. Win*. Were you at the count's service at any time?—*Watts*. Yes.

Sir *Fr Win*. How long?

Watts. I was with him 11 days: I came to him upon the Friday.

Sir *Fr. Win*. How long was it before the death of Mr. Thynn?

Watts. I think it was 10 days before the death of Mr. Thynn.

Sir *Fr. Win*. What was your employment with him?

Watts His boy to wait upon him.

Sir *Fr. Win*. Did you lie in the same lodging?—*Watts*. No, at my father's.

Sir *Fr. Win*. What was the agreement between your father and the count?

Watts. 6*d*. a day and my diet.

Sir *Fr. Win*. What company did you observe came to the count's lodgings?

Watts. That gentleman there in the black perriwig.

Sir *Fr. Win.* Was he often with your master?

Watts. Yes, every day.

Sir *Fr. Win.* How many lodgings had he while you were with him?

Watts. Three: One in the Haymarket, and one in Rupert street, and then the last in St. Martin's.

Mr. *Williams.* Thus, child; do you remember the time of killing Mr. Thynn?

Watts. Yes.

Mr. *Williams.* Were you in your master's service then?—*Watts.* Yes, I was.

Mr. *Williams.* Who was in your master's company that morning before Mr. Thynn was killed?

Watts. I came up, as I used to do in the morning to my master, and he asked me what was the matter with the bustle in the street? And I told him somebody was taken upon suspicion of killing esquire Thynn.

Sir *Fr. Winn.* That was on Monday morning; but the Sunday morning before, what company did you observe there then?

Watts. I cannot tell any thing exactly of the Sunday morning.

Sir *Fr. Winn.* Was captain Vratz there?

Watts. I cannot exactly remember.

Sir *Fr. Winn.* What time in the evening was it reported Mr. Thynn was killed?

Watts. About 8 o'clock.

Sir *Fr. Winn.* Can you tell who brought the first news?

Watts. One of my lady Seymour's maids, who was telling the people of it below.

Sir *Fr. Winn.* Did you observe any body come to your master's lodgings afterwards?

Watts. Yes.

Sir *Fr. Winn.* Pray who came?

Watts. That gentleman in the black perriwig.

Mr. *Williams.* Pray in what habit was he? and how came he in?

Watts. He came in a great coat; I cannot tell whether it was cloth or camblet.

Mr. *Williams.* And what, did he speak to any body, or go strait up?

Watts. No, he spoke to nobody, but went strait up stairs.

Mr. *Williams.* Did he go up to your master's lodgings?

Watts. Yes, I believe so, but I stayed below in the shop.

Mr. *Williams.* How long did you stay in the shop?

Watts. I stayed there about half an hour.

Mr. *Williams.* Did you leave him there?

Watts. Yes, I did.

Mr. *Williams.* Did he continue there all the time that you were in the house?

Watts. Yes.

Mr. *Williams.* What time did you go away?

Watts. About three quarters of an hour after that gentleman came in.

Sir *Fr. Withens.* Do you remember you had any discourse with the count, about riding on Sunday?

Watts. He asked me on Sunday in the forenoon, whether people were suffered to ride about the streets on horseback on Sundays?

Sir *Fr. Winn.* This was that Sunday morning, was it?

Watts. Yes: He asked if they might be suffered to ride about the streets on Sunday? I told him yes, before sermon-time and after sermon-time.

Sir *Fr. Winn.* About what time of the day was it that he had heard this discourse?

Watts. About 10 or 11 o'clock.

Sir *Fr. Winn.* Are you sure it was Sunday?

Watts. Yes.

Sir *Fr. Winn.* Then I ask you another question: Upon Sunday morning, or any other time, do you remember that the Polander was with the count your master?

Watts. He came in on the Saturday morning.

Mr. *Williams.* Was he in the company or presence of the count?

Watts. I was above stairs when he came in.

Sir *Fr. Winn.* What do you know of any sword that was delivered to him?

Watts. Upon Sunday morning there was a sword brought to my master's lodgings, and my master's man took it of me, and carried it up stairs, and this man, the Polander, afterwards had it below stairs.

Mr. *Williams.* When was this sword brought to your master's house?

Watts. It was on the Sunday morning.

Mr. *Williams.* What, the cutler brought the sword?

Watts. No, it was sent by a porter from Mr. Hanson.

Mr. *Williams.* What room was it carried into when it was brought?

Watts. I think I did not carry it up: Yes, truly, now I remember, I did, and delivered it to my master.

Mr *Williams.* Pray what did the count say to you?

Watts. I asked him if there needed an answer to the note I carried with it, and he said no.

Mr. *Williams.* To whom was the sword delivered afterwards?

Watts. It was brought down, and afterwards this Polander had it.

Mr. *Williams.* That man there?

Watts. Yes.

Mr. *Williams.* You say that the sword was given to the Polander: Pray speak that the jury may hear. Who brought down the sword?

Watts. I saw it in the Polander's keeping when it was below, but I cannot say who brought it down.

Sir *Fr. Winn.* Where did the Polander dine on Saturday?

Watts. He dined with my master's man, and I on Saturday.

Sir *Fr. Winn.* Where did he lie that night? At whose chamber?

Watts. At our lodgings in the garret, in my master's man's chamber.

Sir *Fr. Winn.* What day was this, do you say?—*Watts.* Saturday.

Mr. *Williams.* When the Polander had the sword, do you remember any boots that he had under his arm?

Watts. Yes, he had boots under his arm.

Mr. *Williams.* And he had the sword with him when he went away?—*Watts.* Yes.

Mr. *Williams.* Had he any coat?

Watts. Yes, a new coat.

Mr. *Williams.* Well, I ask you once more, what time of day was it that he went away with the sword and the boots?

Watts. It was in the forenoon.

Mr. *Williams.* What day of the week?

Watts. Sunday morning.

L. C. J. Ay, but your doctor that you examined before, says, the Polander went away with him, and he was not there on Sunday morning.

Sir *Fr. Winn.* It is true, my lord, it was too tender a point for the doctor, he lies under some suspicion; and it is *proximus ardet* with him.

L. C. J. Well, call him again: Look you, doctor, you were asked before, and now you are asked again, were you at count Coningsmark's lodgings on Sunday morning?

Dr. *Harder.* I cannot certainly tell.

L. C. J. When did you see the Polander at the count's lodgings, and whether was it on Sunday morning?

Dr. *Harder.* On the Sunday morning I did not see him. The only time was when I fetched him from my lord's; I have not seen him before nor since.

L. C. J. Then call the boy again. Where did the Polander dine on Saturday?

Watts. He dined with me and my master's man.

L. C. J. Where?

Watts. Below in the kitchen of our lodgings.

L. C. J. Where lay the Polander that night?

Watts. He lay in our garret.

L. C. J. When went he from your master's lodgings?

Watts. On Sunday morning.

Mr. *Williams.* Had he an old coat or a new coat upon him?—*Watts.* He had a new coat.

L. C. J. Was the doctor with him?

Watts. Yes, the doctor went away with him.

Dr. *Harder.* I have not seen the Polander above once in my life.

Sir *Fr. Winn.* But were you at the count's on Sunday morning, or no, I ask you?

Dr. *Harder.* I do not know whether it was Saturday or Sunday.

L. C. J. But when you fetched him away, was it Saturday or Sunday morning?

Dr. *Harder.* My lord, I cannot very well remember.

L. C. J. Had the Polander a sword when you went away with him?

Dr. *Harder.* I cannot positively say, but (as travellers commonly have) he might have a sword.

Sir *Fr. Winn.* Now come to yourself, and deal honestly, for you are upon your oath; I ask you, friend, this, you say he might have a sword, do you remember a pair of boots?

Dr. *Harder.* No, I do not.

Sir *Fr. Winn.* Do you remember the coat he had uppermost?

Dr. *Harder.* Yes, he had something under his coat, but I don't know it was boots.

L. C. Baron. Had he a buff-coat under his campaign?—*Watts.* Yes.

Sir *Fr. Withens.* Let me ask you one question, young man; do you remember you saw any musquetoon in your master's lodging?

Watts. I did see a gun there.

Sir *Fr. Withens.* When was that?

Watts. I saw it upon Saturday.

Mr. *Williams.* The musquetoon or gun that was in your master's lodgings, was it that which was brought by the Polander, or no.

Watts. I cannot tell that.

Mr. *Williams.* Was it a long piece or a short piece?

Watts. It was not a short piece.

L. C. J. Did the Polander take it away with him?—*Watts.* No, not that I know of.

Mr. *Williams.* Now, young man, I would ask you as to Monday morning: about what time on Monday morning did you come to your master's lodgings?

Watts. It was between seven and eight o'clock, a little after seven.

Mr. *Williams.* What condition was he in? Was he in bed, or up?—*Watts.* He was up.

Mr. *Williams.* What was he doing? Was he packing up?—*Watts.* Not that I see.

Sir *Fr. Winn.* It was when he asked you about the hubbub in the street; pray tell what he said to you?

Watts. He asked me what the matter was with the bustle in the street, and I told him that some were taken that had killed esquire Thynn; and I told him all the story, as near as I could: he asked me when esquire Thynn was murdered; I told him the night before; but I did not mind any thing that was done: but as I went down stairs, I met with a stranger, and he went up stairs, but I never saw my master after, till he was taken.

Sir *Fr. Winn.* Did he ask you what Mr. Thynn was?

Watts. Yes, and I told him I heard he was a man of a great estate, and well beloved, and that the duke of Monmouth was in the coach but a little before, and if he had not gone out, he had been killed too.

Sir *Fr. Winn.* What said the count to you, when you told him Mr. Thynn was well beloved?—*Watts.* He said nothing.

Sir *Fr. Winn.* Can you remember who it was came to your master then?

Watts. I know the man if I see him again.

Sir *Fr. Winn.* Do you know his name?

Watts. No, I do not know his name.

Mr. *Williams.* Were any of your master's goods carried away then?—*Watts.* Yes.

Mr. *Williams* What goods were carried away then?—*Watts.* Two portmantles.

Mr. *Williams.* Who carried them away?

Watts. My father carried them away.

Mr. *Williams.* What time was it?

Watts. Between eight and nine o'clock.

Sir *Fr. Winn.* It was time to be gone. How parted you and your master?

Watts. The stranger did come in, and I never saw my master afterwards.

Sir *Fr. Winn.* What, did your master take no leave, nor say any thing to you?

Watts. No.

Sir *Fr. Winn.* What kind of periwig had he when he went away?

Watts. He had a black perriwig.

Sir *Fr. Winn.* What clothes?

Watts. A light-coloured suit, with gold buttons.

L. C. Baron. Will the count ask the boy any questions?

Mr. *Craven.* Did you see the gun in the room after the Polander was gone?

Watts. Yes.

L. C. J. It is very plain that this gun was none of the gun that did this mischief, but the gun the Polander brought over from beyond sea.

Sir *Fr. Winn.* Call the boy's father, Thomas Watts, (who was sworn.) How long have you known the count?

T. Watts. I do not know him, but as I have seen him.

Sir *Fr. Winn.* Were you employed to carry any thing for him?

T. Watts. Two or three times I was.

Mr. *Williams.* When were you last employed by him?

T. Watts. The morrow after the murder was committed.

Mr. *Williams.* What time in the morning was it?

T. Watts. It was between eight and nine o'clock in the morning.

Mr. *Williams.* What was it you did for him?

T Watts. I carried a portmantle, and a portmantle-trunk, and some other things.

Mr. *Williams.* Where were you directed to deliver these?

T. Watts. His man told me they were to go to Windsor.

Mr. *Williams.* Well, tell the whole story.

T. Watts. He bid me carry them to Charing-Cross, that they might be put into the coach there. But when he came to Charing-Cross, a coachman and he had some words, and he bid him open his boot, and then he took the things from me, and put them into the coach.

L. C. J. Who was it that told you they were to go to Windsor?

T. Watts. It was his man.

Sir *Fr. Winn.* I would ask you, Sir, when was the first time you knew the count?

T. Watts. It was ten or eleven days before.

Sir *Fr. Winn.* What was the occasion that brought you acquainted with him?

T. Watts. I was Dr. Frederick's porter, and he sent me to carry some things to the count.

Mr. *Williams.* Was it your son that waited upon him?

T. Watts. Yes. For when I brought the things, they said they had forgot to give me a sword which I was to carry with the things; and I said, that I had a boy that I would send, and I did so, and so they took a liking to the boy.

Mr. *Williams.* What was the agreement for your son's service?

T. Watts. Six-pence a day and his victuals.

Sir *Fr. Winn.* What was the man's name (as you remember) that gave you the things to carry to the coach, which were said to go for Windsor?—*T. Watts.* I cannot tell his name.

Mr. *Williams.* He that pinched and pushed you back, and took the things from you, and put them into the coach?

L. C. J. Did you see the count that morning?—*T. Watts.* No, I did not see him.

Mr. *Williams.* Have you been laboured and sought to by any body to conceal your boy, that he should not be brought at this trial?

T. Watts. No, Sir.

Mr. *Williams.* Had you no endeavours used with you about it?—*T. Watts.* No.

Mr. *Williams* Did nobody speak of any such thing to you?—*T. Watts.* No.

Mr. *Williams.* Did any merchant or any body send to you about this boy, to take him into service?

T. Watts. There was a merchant that would have helped the boy to a place on Saturday last, but the persons that would have procured it, were about it a good while ago.

Mr. *Williams.* Call Derick Raynes and Richard Chappel, (who were sworn, and Raynes stood up.) When did you see the count, the prisoner at the bar?

Raynes. On Monday in the afternoon.

Mr. *Williams.* What time was it in the afternoon?—*Raynes.* In the evening.

Mr. *Williams.* Where was it?

Raynes. At my house.

Mr. *Williams.* Where is that?

Raynes. At Rotherhith.

Mr. *Williams.* How came the count to your house?

Raynes. I know not; I was not at home when he came.

Mr. *Williams.* Pray when you saw him, had he his own hair or a perriwig, or how was he habited?

Raynes. He had black hair then.

Mr. *Williams.* How long did he continue at your house?

Raynes. From Monday till Thursday morning.

Mr. *Williams.* Was he privately there or publickly?

Raynes. He walked up and down the house.

Sir *Fr. Winn.* What countryman are you?

Raynes. I am a Swede.

Sir *Fr. Winn.* What became of him after Thursday.

Raynes. On Thursday morning he took water and went to Deptford.

Sir *Fr. Winn.* What way did he go, by boat or how?

Raynes. A waterman carried him.

Mr. *Williams.* Pray what did the count say to you about his coming in a disguise to your house?

Raynes. I knew nothing at all. I came late home, and when I came to know of him what he was, then he told me that he was count Coningsmark.

Mr. *Williams.* What did he say to you when you discovered that he was the count? What did he tell you of his business?

Raynes. He said nothing; but that he was desirous to go to Gravesend.

Sir *Fr. Winn.* Upon your oath, Sir, did you furnish him with any clothes?

Raynes. Yes, I lent him a coat.

Sir *Fr. Winn.* What say you to a black suit?

Raynes. The black suit did not belong to me.

Sir *Fr. Winn.* What say you to a velvet cap?

Raynes. I helped him to a coat, stocking, and shoes.

Sir *Fr. Winn.* Then I ask you, what did he declare to you?

Raynes. Why, he did desire to have those clothes.

Sir *Fr. Winn.* You are an honest man, tell the truth.

Raynes. He declared nothing to me.

Sir *Fr. Winn.* When you dressed him, why did he put on that habit?

Raynes. He thought his own clothes were too cold to go upon the water.

Sir *Fr. Winn.* Had he no cloaths before?

Raynes. Yes, he had.

Mr. *Williams.* You had the warmer coat, had you?

Sir *Fr. Winn.* Did he desire you to let him have your clothes, because he was in trouble?

Raynes. He desired a coat of me, and a pair of stockings to keep his legs warm; and when he had got them, his own shoes would not come on, so I lent him a pair of shoes.

Sir *Fr. Winn.* I do ask you, did he declare the reason why he would have those cloaths was, because he would not be known?

Raynes. He said he was afraid of coming into trouble.

Sir *Fr. Winn.* Why were you unwilling to tell this?

Raynes. As soon as I came to know he was the man, I told him he should not stay in my house.

Sir *Fr. Winn.* Did you lend him those clothes, or sell them?

Raynes. I lent him them.

Sir *Fr. Winn.* Had you them again?

Raynes. No, I had not.

Sir *Fr. Winn.* Are you paid for them, or no?

Raynes. No, my ship lies at the key, and I came home late in the evening, and found him there.

Sir *Fr. Winn.* Set up Richard Chappel.

Mr. *Williams.* When did you first see that gentleman?

Chappel. On Thursday morning, at ten of the clock.

Mr. *Williams.* Where?

Chappel. At Rotherhith.

Mr. *Williams.* How came you to him? Who brought you?—*Chappel.* That man.

Mr. *Williams.* What were you to do with him?

Chappel. To carry him to Gravesend.

Mr. *Williams.* Do you row in a pair of oars, or a sculler?—*Chappel.* A sculler.

Mr. *Williams.* Whither did you carry the count that day?—*Chappel.* To Deptford.

Mr. *Williams.* Whither the next day?

Chappel. To Greenwich.

Williams. And whither then?

Chappel. To Greenhith and then the next day to Gravesend.

Mr. *Williams.* Was he in the same clothes all the while?

Chappel. Yes, all the while.

L. C. Baron. Were you hired to wait upon him all that time?

Chappel. Yes, I was to have five shillings every 24 hours.

L. C. Baron. Was he alone?

Chappel. No, this man was with him.

L. C. J. Did he go in the sculler with him?

Chappel. Yes, to Deptford.

Mr. *Williams.* Well, now we will call the gentleman that seized him at the waterside at Gravesend.

Sir *Fr. Winn.* What did the count call himself? What profession did he tell you he was of?

Chappel. He told me he was a merchant.

Sir *Fr. Winn.* Did he say he was a jeweller, upon your oath?

Chappel. Yes, he said he had bought jewels.

Sir *Fr. Winn.* Where is Mr. Gibbons, and Mr. John Kid?

[Who were sworn, and Mr. *Kid* stood up.]

Mr. *Williams.* Mr. Kid, pray, sir, will you acquaint my lord and the jury in what condition you found the count at Gravesend? Tell the whole story, and speak aloud, that all may hear you.

Kid. I had some information upon Friday night of him.

Mr. *Williams.* Of whom and what?

Kid. Of the count where he was. So I made it my business to enquire into it. On Saturday in the afternoon a gentleman came to me, and gave me certain information where he thought that gentleman the count was. This gentleman coming to me, said, Mr. Thynn is a stranger to me, but said he, I would not have Mr. Thynn's blood lie at my door. This same person who is put out in the gazette, I believe, is at a neighbour's house of mine. Says he, I desire you to be private in it, because it may do you a prejudice; so we went into a coach at Charing-cross to go to a justice of peace; I did not know where sir John Reresby lived, but enquired of Mr. Gibbons, who told me, but he was not at home, and Mr. Bridgman was not

at home; so we went to the recorder, and there we had a warrant, and then I came by water to Rotherhith, and this same Raynes that was examined, and his wife where he lay, were gone to Greenwich to carry his clothes, a grey suit, and other clothes that he had left. So going down to Greenwich, we called every boat that was upon the river aboard of us, to know, whence they came. And we had taken her sister along with us, and she called out her sister's name, Mall Raynes, and her brother's name, Derick Raynes, and so at last we got the boat wherein they were, on board of us. And we asked the man what he had done with the gentleman that lay at his house? He declared he was gone away, he did not know whither. So I went back again to this gentleman that gave me this first information, who did go to him as a neighbour, to know whither he was gone, and where he was to be found, and where he would land. So he declared the particulars: That if we missed him that night, we should have him in the Hope upon Monday morning, upon a vessel that was to be cleared upon Monday morning. So upon Sunday night coming to Gravesend about eight or nine o'clock, or thereabouts, there he landed. There were 13 or 14 Swedes at the same house where he was to land; so we thought it convenient to take him at his first landing, for fear of further danger So I staid at the Red-lion back-stairs, and he landed at the fore-stairs, where the watermen were As soon as he was laid hold of, I came to him; said I, your lordship shall not want for any thing that is convenient. He desired to know whether I knew him; I told him yes; and that his name was count Coningsmark. That is my name, says he; I do not deny it So the mayor came, and the Customhouse officers searched him, and found nothing at all of any arms about him. He desired he might be used like a gentleman, and so he was; for there was no abuse given to him, as I know of Coming up the river, the most of my discourse was about material affairs; a serjeant that had the command of a file of musqueteers, which the deputy governor sent to guard the count to Whitehall, a gentleman sitting there by me, was asking me concerning Mr Thynn's murder; I told him, that I was at Newgate on Friday, and there I saw those that had done that barbarous fact. With that, my lord asked what lodgings there were in Newgate? And whether the captain had a good lodging? I told him a very good one. He asked me whether he confessed any thing: I told him he had confessed some particulars. And, said I, it is the most barbarous thing that ever was done. Certainly, says my lord, this Mr. Thynn must have correspondence and commerce with some lady that this captain knew, that belonged to the court, or he would never have done it. As for the Polander, I told him that he had confessed, he wept mightily. With that my lord seemed very much concerned, and took up his clothes and bit them, and sat awhile up, but was very much discomposed, and then desired to lie down.

Sir *Fr. Winn.* That was, when you told him, the Polander had confessed?

Mr. *Kid.* Yes; my lord was mightily altered in his countenance.

Sir *Fr. Winn.* Did you at the first time that you seized him charge him with the murder?

Mr. *Kid.* No I did not.

Sir *Fr. Winn.* Was he in a black perriwig?

Kid. His cap fell off, and his perriwig, just as I came to him.

Sir *Fr. Winn.* Set up Mr. Gibbons. Pray will you tell what passed?

Gibbons. My lord, as soon as ever he came to shore, I walked by him, and gave him a little kind of a justle; and my reason was, to see whether he had not a black coat under his campaign: I walked close to him just in this manner, as he walked along, so he turns about again and went down to the waterside, and asked the watermen; Watermen, have you stowed your boat? They answered, yes. Then come away, said he; so soon as he came back again, I catched him fast hold by the arm, and the first word he said to me was, What, do you come to rob me? Said I, my lord, you are my prisoner, and I told him I was the king's messenger, that had waited several days for him; and holding of him very hard; whether that was the occasion of it or the watermen that were on the other side of him, he dropped down his sword between his legs; but when I named his name, he gave a little start, and his perriwig dropped off his face We went up the street to the mayor, and the people crowding about us, were very rude and very rugged, and he desired he might be well used We did all we could to keep the people from him; We went up to the mayor's house, and when we came there I desired he might be searched, whether he had any arms; He said he had none, and there was none.

Sir *Fr. Winn.* When you had the custody of him, whither did you carry him?

Gibbons. We carried him to the mayor's house, and afterwards we removed him from his house to an inn.

Sir *Fr. Winn.* What did you do the next day?

Gibbons. We staid there about some two or three hours. After an hour, or half an hour's time, near upon an hour, my lord came to me and asked me my name; and he said, the reason was, that after his trouble was over he would give me thanks for my civility to him. Captain Sinkleer, who stood up, gave him my name before I could, that it was Gibbons. Yes, said I, my name is Gibbons, and I belong to the duke of Monmouth: Why, says he, the duke of Monmouth has no command now and therefore how could I take him by his order? My lord, said I, I do not apprehend you by his order; you have killed a very good friend of mine, and had not providence ordered it otherwise, you had like to have killed a more particular friend, and a master: So, my lord, he seemed to be very sorry at that; but, says he, I don't think they would have done any harm to the duke of Monmouth.

Sir *Fr. Winn*. What else did he say?

Gibbons. I think I have told you all that is material.

Sir *Fr. Winn*. Were you in the boat at any time, and gave him any account of the man's having confessed; what did he say to it?

Gibbons. Sir, I was not there, nor I did not come up in the same boat with him.

Mr. *Williams*. Did he mention any thing about a stain to his blood?

Gibbons. I ask your pardon, he did so.

Mr. *Williams*. What did he say?

Gibbons. Says he, it is a stain upon my blood; but one good action in the wars, or one lodging upon a counterscarp will wash away all that.

L. C. J. What did he say was a stain upon his blood?

Gibbons. My lord, if you please, I will tell you: As I said, he asked me my name, because he would come to give me thanks for my civility after his trouble was over; the captain, being quicker than I, told him my name: Yes, Sir, said I, 'tis Gibbons, and I belong to the duke of Monmouth; said he, he has no command now, how could you come upon his order? Said I, I do not come upon his command, but you have killed a very good friend of mine, and a countryman; and if providence had not ordered it otherwise, you had killed a more particular friend of mine, and a master, that I had served many years; said he, I don't think they would have done the duke of Monmouth any injury: After that he walked up and down a-while, and then said he, 'tis a stain upon my blood; but one good action in the wars, or a lodging upon a counterscarp, will wash away all that. The mayor was in the room, and several others.

Sir *Fr. Winn*. Pray, Sir, one thing more; when you did speak to him of confession, did he say any thing to you about captain Vratz?

Gibbons. Sir, he was only asking of me how things were, what the people said, or some such thing? I was not forward to tell him at first, but afterwards I did tell him, that the captain had made a confession, though it was a thing I did not know then. Says he I do not believe the captain would confess any thing.

L. C. J. Did he say so?

Gibbons. Yes, he did, to the best of my remembrance.

Sir *Fr. Winn*. We have done with our evidence, my lord.

L. C. J. My lord Coningsmark, will you ask him any thing?

Count *Coningsmark*. No.

L. C. J. Then the next thing is, you heard the evidence that is given against you. Now you must come to your defence: I will put you in mind of some things, my lord, which things it will concern you to give some account of. It is here laid to your charge, That you were accessory to this murder of Mr. Thynn, and that you were the person that directed and designed it. And these evidences there are against you, That you were cognizant of this, and that you were the person that designed this: That you came into England about a fortnight or 3 weeks before the death of Mr. Thynn; that captain Vratz, who was one of them that killed him, came with you, that he lay at your lodging, that he was constantly with you, that you lay *incognito* there, and private, would not be known what your name was, that you shifted lodgings from time to time, that Borosky the Polander came over by your order, was brought to your lodging, was provided for there, that he had clothes, and he had a sword provided by your lordship for him, and that there was care taken that it should be an extraordinary good sword, that you did discourse to Mr. Hanson about your calling Mr. Thynn to account, and this much about the time, or a little before the time of his death, and what the laws of England would be in case you should call Mr. Thynn to account; and particularly you desired to know what Monsieur Leinberg's opinion might be concerning it, and especially what in relation to my lady Ogle. And that after all this, Mr. Borosky was not only clothed by you, but was sent by you to Vratz, (that the Doctor says) and after Vratz him, that he lay in your lodging that night before this evil thing was done, and after the thing was done, the same night Vratz came to your lodging and was with you, and had private conference with you, that the next morning you got up and went away, though you had taken physic the night before, and though you yourself, nor your Doctor, thought you fit to go abroad, and you go away *incognito*, in a periwig, disguised, you direct your servant to carry your clothes one way while you go another; then you go down to the water-side, and lie private near the river, at a Swede's house at Rotherhith for several days together; you afterwards take great care to conceal yourself, by changing your clothes, and putting yourself in a garb not like your own, and giving out you were a merchant or a jeweller, or some other trade; that afterwards you trifled away the time and went 2 or 3 miles, and then struck in upon one side of the river, and afterwards on the other side of the river, suspiciously up and down not to be known, and this not like yourself in any manner, but in a pitiful poor disguise, and hire a sculler to carry you, from whom you concealed yourself, and so all along you trifled away the time till you were taken at Gravesend: That afterwards when you were taken, you were inquisitive about the captain, whether he did confess; that you should likewise say some such suspicious words as these, That you believed those who killed Mr. Thynn had no design against the duke of Monmouth; that you believed the captain would not confess; that you seemed to be concerned when you were told the Polander had confessed; that afterwards you should say, my lord, this is a stain to my blood; but one good action in the wars, or a lodging upon a counterscarp, will take away all this, or wash it clean.

And then, which is also testified against you, that you should ask the boy that very morning of the day the murder was committed, whether they used in London here to permit men to ride up and down on horse-back upon a Sunday? Now these things, my lord, it will import you to give some account of.

Sir *N. Johnson.* My lord says, he desires he may answer all these things one after another.

L. C. J. Let him do so. And first let him answer what his reason was to come into England in such a manner *incognito*, at this time, and lie concealed, when he had been in England before, and lived in a mighty good equipage and condition?

Mr. *Craven.* My lord, he says that hearing there was a peace between Swedeland and England, and Holland designed, and like to be confirmed suddenly against the French, he came with a design to serve England, and to raise a regiment of horse here for the service of the king of England.

Count *Coningsmark.* If any such peace should be, if any appearance of an alliance between England and Holland, and Swedeland, I had a design to propose, if I could have a regiment.

L. C. J. Why did he come unknown, and in a disguise?

Sir *N. Johnson.* Secondly he says, my lord, the reason of his coming *incognito* was, because he had a distemper upon his arms and breast, and having formerly tried and employed this physician, and having experience that he was an able man, he was resolved to lie privately till he had cured himself; for he could not drink wine nor keep company, having this distemper upon him, and he was afraid, if he had kept company, it would have hindered his cure, and he should not have been so soon cured, as if he kept in the house; and he says, that his equipage could not come 'till after, and he would not willingly appear 'till he had his equipage as a man of his quality ought to do; and these were the reasons that made him keep private.

L. C. J. Pray ask him upon what occasion he did change his lodgings so often?

Sir *N. Johnson.* He says that his first lodging was changed because it was too cold for him; and he says, the next lodging, where he was, those that were there can tell, the room where he was smoaked so cruelly, that he was not able to endure it. And he says, he liked the house so well, that he sent to see if the chimney could be mended, and it was not to be done, otherwise he had gone back to that house, and he has the man and his wife to bear witness of it, if you please.

L. C. J. Let him call them.

Count. Call Joseph Parsons and his wife. [But they did not appear.]

L. C. J. Then ask my lord this, to what purpose he did bring over this Polander here? he ought to consider of that, and give an account why he brought him hither.

Interpreter. He says this Pole was taken into his service when he went to Tangier, when he went several thousand miles to do the king's service, and he had designed at that time to bring him into England to dress his horses after the German way.

L. C. J. Had the Polander been a groom formerly?

Interpreter. He says, he thinks he had been groom to his uncle before.

L. C. J. But to what purpose did he bring him hither?

Interpreter. He says there was a great discourse about Strasburgh's being besieged, he did design to buy some horses, for every one did arm themselves; and he says he sent over 1,000 pistols to be answered by the merchants here, to buy horses.

L. C. J. Hath he any body to prove it?

Count. There is Mr. Risby, Mr. Hanson, and my brother.

Young Count. My lord, I had a bill of Exchange.

L. C. J. For how much money, my lord?

Young Count. For 1000 pistols, to buy horses, and he has bought one horse, and was to buy more.

L. C. J. Do you hear, gentlemen, what he says? He came over to buy horses, and he returned 1,000 pistols for that purpose; and his brother does attest there was such a sum returned by bills of Exchange, for the buying of horses.

Interpreter. My lord, he says he does fear that the jury that do not understand English, do not understand his reasons for being in a disguise.

L. C. J. Cannot he give an account of it himself?

Mr. *Williams.* No, my lord, his evidence must be interpreted to them by the Interpreter.

L. C. J. The doctor's evidence hath been heard already about the same matter.

Sir *N. Johnson.* He desires, my lord, to know this; whether he may not say the same things over again to the jury in French? there are a great many persons of quality that understand it, and they will see whether he speak true.

L. C. J. Let him, if he pleases.

Sir *Fr. Winn.* But then, my lord, I hope that your lordship will tell the jury it goes for nothing without proof.

[Then the Count spoke to the Jury in French.

L. C. J. My Lord, I do not know whether the gentlemen that are of your right-hand heard you or not.

Jurymen. We understand not French. [Then the count spake it in Dutch.]

Interpreter. He says, if it had not been for the great stormy weather, the Polander had been sooner in London, for he sent for him before. He says, the letters go from Strasburg to Hamburgh in seven days, and that most commonly ships do come from thence in eight days, but in a great deal less time than the Polander came over in. And he says, that he writ

four months before to fetch the Polander over, and he might have been here long ere now, if it had not been for the weather.

L. C. J. Then, my lord, I would ask you some more questions, which concerns you to answer. Upon what occasion did you make your discourse of Mr Thynn's death to Mr. Hanson? Had you any discourse with him? and upon what occasion?

Sir *N. Johnson.* My lord, he says in common discourses, it is impossible to give an account of the discourse, or remember the occasion of it so long ago.

L. C. J. Ask him if he had any quarrel with Mr. Thynn? Or knew Mr. Thynn?

Sir *N. Johnson.* He says, my lord, that he never had any quarrel with Mr. Thynn, nor to the best of his remembrance, with his eyes, never saw Mr Thynn.

L. C. J. Then I ask you this, my lord, did you ever hear Mr. Thynn had married my lady Ogle before you last came into England?

Interpreter. He says, he never heard of it until he was going to Strasburgh, and then all the whole town did talk of it.

L. C. J. How long is that ago?

Interpreter. Half a year ago.

L. C. J. Then it was before his last coming into England.

Sir *Fr. Winn.* My lord, his discourse with Mr. Hanson, was not when he was last in town, but before.

L. C. J. Then pray ask him this, what occasion he had to ask the boy upon Sunday, whether horses might ride about the town of a Sunday?

Interpreter. He says, my lord, this is a very strange thing, that he should go and ask a scullion-boy, whether people might ride on Sundays, when he himself, over and over again has rid upon Sundays to Hyde-Park, as many persons of quality do.

L. C. J. Has he any body to prove it?

Sir *N. Johnson.* Here is major Oglethorp, (who, with divers other gentlemen, testified they had seen him riding divers times, on Sundays, in Hyde-Park).

L. C. J. Then that question signifies nothing; there could be nothing in that question.

Sir *N. Johnson.* My lord, he desires that I may be examined concerning the boy, of what I heard by chance from the boy himself, and I will give you an account of it upon my faith and reputation.

L. C. J. Do so, Sir Nathaniel, say what you can say.

Sir *N. Johnson.* My lord, I having had the honour to serve a-while under my lord's father, I was desirous, knowing the honour of the family, and bearing a great respect to it, to do my lord all the reasonable service I could. So hearing my lord was taken, and in Newgate, I went to wait upon him; and coming there, Mr. Richardson told me, there was a little boy waited at the count's door for his wages, as he said. So I spake to the boy, and asked him, what do'st thou stay for? He told me for his wages. Said I, certainly my lord will pay you your wages; how long have you served him? He said, a little while; and then said I, if you lived with him, what do you know of his business? And then of himself he began and told me: only this I know, That Vratz was in my master's chamber that night, and the Polander that night went out with a pair of boots under his arm, and more than this I do not know. Said I, boy, who do you serve? Says he, I have no master at present; but then of his own accord he told me, sir Thomas Thynn had promised him a place, and in the mean time, I am, says he, to go to serve my lord Privy-Seal; and so my lord gave him 20s for his wages.

Interpreter. My lord desires the boy may be asked, whether he did not go to fetch physic.

L. C. J. Ask him; where is the boy?

Watts. No, I do not remember it.

L. C. J. Now, you should put the count in mind.

Sir *Fr. Winn.* We observe what a sort of interpreter sir N. Johnson is: he speaks more like an advocate than an interpreter; he mingles interpreter, and witness, and advocate together, I don't know what to make of him.

L. C. J. The count had taken physic that day.

Sir *Thomas Thynn.* My lord, I desire to be heard, I never spake to the boy in all my life.

Mr. *Thynn.* Nor I. But he gave the same testimony he gives now, before the king and [illegible]

L. C. J. Look you, sir Thomas, it does not concern you at all to speak to that, there is no reflection made upon you in it. But my lord Coningsmark, it will concern you a little, to shew upon what occasion captain Vratz came to you that night that Mr. Thynn was killed.

Interpreter. He says, my lord, he can't tell why he came there; it is a proper question to ask captain Vratz himself.

L. C. J. That can't be.

Interpreter. He says, my lord, he kept his chamber at that time; he had taken cold upon his taking physic, and the captain came to give him a visit, and he never reflected what any one came for; he was lying upon his bed.

L. C. Baron. Pray ask my lord this: why this man, that was sent over to attend horses, should come upon the Friday, and a campaign coat be bought him on the Saturday, and he furnished with a sword on the Sunday?

Interpreter. My lord, the noise is great, but I suppose your lordship desires to know what was the reason why he bought a sword for him and a coat?

L. C. Baron. Ay, and how he came by the buff-coat?

Interpreter. He says he had that before.

L. C. Baron. But why must he have such a strong basket-hilted sword furnished him in a day's time.

Interpreter. He says, my lord, as to the

Foreman. None to our knowledge.

Cl. of Cr. Charles John Coningsmark, hold up thy hand, (which he did.) How say you, is he Guilty of the felony whereof he stands indicted as accessary before, or not Guilty?

Foreman. Not Guilty.

Count *Con.* God bless the king and the honourable bench.

Cl. of Cr. Then hearken to your verdict as the Court hath recorded it, you say that George Borosky, &c. and so you say all.

Then the jury was dismissed, and the Court ordered a recognizance to be taken from the count, with three sureties, to appear the next sessions, and to answer any appeal if brought; after which the judges went away, and the recorder, with the lord mayor and aldermen, stayed to pronounce sentence on the convicted malefactors.

Cl. of Cr. Keeper, set George Borosky to the bar, hold up thy hand, (which he did.) Thou standest convicted of murder, for killing Thomas Thynn, esq. what canst thou say for thyself why the Court should not give judgment upon thee to die according to law?

Interpreter. He says, he prays God to have mercy upon him.

Cl. of Cr. Tie him up. Set Christopher Vratz to the bar.

Interpreter. He says he hears he is condemned, but he was never rightly examined, nor fairly tried.*

Cl. of Cr. Set John Stern to the bar.

Interpreter. He says he did it for the captain's sake, he went as a second along with him.

Then the prisoners being tied all up by the executioner, proclamation was made for silence, during the pronouncing of the sentence.

Mr. *Recorder.* You the prisoners at the bar, George Borosky, Christopher Vratz, and John Stern, you have been all indicted for the murder of a gentleman of great quality, Mr. Thynn; a great, and heinous, and a crying crime, that cries aloud for vengeance: you have been brought to your trial, and tried indifferently by a jury not consisting only of the countrymen of the party slain, but compounded of foreigners and freeholders of the county too. These impartial men have found you Guilty, and indeed the plainness of your guilt is such, that you yourselves have acknowledged yourselves Guilty. For when you were apprehended, your guilt did so stare in your faces, and you could give so little an account how you had bestowed that time wherein he was murdered, that you were forced to confess your interest in the fact.

It is our duty to pronounce the sentence of the law against you upon this conviction; but it is also our usage to open the nature of the crime for which the convicted person is to suffer death, for the conviction of the offenders themselves. Now your crime is one of the deepest die; it is the wilful shedding of innocent blood, to which you could be led by nothing but what you are charged with in the indictment, the motion and seduction of the devil. This crime of murder is put into the highest and foremost rank. When God himself had given laws to the world under the old administration, after the command of honouring father and mother, in the next place he forbids murder. This crime you have committed, and that with the most aggravating circumstances that I have ever known attend any crime of this nature. It was committed upon a gentleman of great quality, that was so far from giving you any provocation to it, that you acknowledge yourselves you never had any communication with him. It was done upon a day when you ought to have exercised and busied yourselves in acts of piety and religious worship. It was done in the streets of the city, near the king's royal palace. But the greatest circumstance of all, is the doing of it in such a manner, that is, it was done by way-laying; a sort of killing the most unworthy, the most base, and the most ungenerous of all other. For that it gives the party assaulted no liberty for any prevention, or any defence by any prudence he can use; and the consequence of it is, as much as lies in the malefactor, to destroy as well the soul as the body; by such an insidious murder, to take a man out of this life, before he can have any opportunity to prepare for another life. Therefore in our public solemn prayers in our church it has very justly and worthily been made part of our liturgy, to pray to be delivered from murder and sudden death.

You that are strangers in this country, if you had been tried and convicted of a breach of our municipal laws, the peculiar laws of this kingdom, much indulgence might be shewn to you because of your little acquaintance with the law. But that is not your case: Your offence is a transgression against the law of God, written in large characters in the nature of man. It is against the laws of all nations, even your own country from whence you come, and any other country wherever you could go, are severe in their laws against that by which you have broken the law in so foul a fact. The very barbarians could say, This man is a murtherer, and divine vengeance will not suffer him to live; so that they all think the divine vengeance concerned to revenge it.

You have slain this innocent gentleman, which is but a single distemper as it concerns him, but if it should go unpunished, it would turn to a pestilential contagion. If such assassinations and murders of persons should not be severely punished, it were a greater woe than ever was brought upon this kingdom. Therefore it is thought fit by his majesty, to make

* "This was because when the evidence for the king was finished, he was never asked what he had to say for himself, which ought to have been done, as is usual in all cases, but is not unlikely the Court were apprehensive he might lay the guilt on the Count." Former Edition.

his justice signal and exemplary upon those that have thus basely and inhumanly brought themselves under the censure of it. That when the fame of this barbarous action shall go abroad, his justice shall also be celebrated upon the actors, and that this kingdom is maintained by justice.

I have but one thing more to say to you, and that is in tenderness to you yourselves. You are to consider that you are to receive another judgment than that you will be condemned by here, and that you may be prepared for that is your great and your only care. Now it is repentance that is the only antidote against the sting of death. You cannot be found innocent, yourselves acknowledge your guilt; then let it be your care to be found penitent. For that purpose you shall have the assistance of some of our learned divines here, and you will do well to hearken to their good counsels. I pray God you may submit to justice patiently, and that your contrition may be correspondent to your crime, and so you may obtain pardon and everlasting favour from God.

It remains only that we pass the sentence of the law against you, which is thus:

"That you shall go from hence to the place from whence you came, from thence to the place of execution, where you shall be severally hanged by the neck until you be dead: And the Lord have mercy upon your souls."

Then the prisoners were carried away, and the court adjourned.

On the 10th of March following they were all three executed, according to the Sentence, in Pallmall, in the same place where they had committed the murder. Stern and Borosky left each of them a paper signed with their own hands. Capt. Vratz would make no Confession, but persisted in denying what the others had owned; never man died with more resolution, and less signs of fear or disorder; his carriage in the cart both as he was led along, and at the place of execution, was astonishing; he was not only undaunted, but looked cheerful, and smiled often: When the rope was put about his neck he did not change colour, nor tremble, his legs were firm under him; he looked often about on those who stood in balconies, or at the windows, and seemed to fix his eyes on some particular persons; three or four times he smiled; he would not cover his face as the rest did, but continued in an undaunted manner, looking up to heaven with a cheerfulness in his countenance, and a little motion of his hands. Being asked, if he had any thing to say to the people, he said no. When they had stood about a quarter of an hour under the gibbet, after they had been tied up, they were asked, when they would give the signal for being turned off; they answered they were ready; so a little while after the cart was driven away; and thus they ended their lives. Captain Vratz was permitted to be buried, but Stern and Borosky were hanged in chains.

The Last Confession, Prayers, and Meditations of Lieutenant JOHN STERN, delivered by him on the Cart immediately before his Execution, to Dr. Burnet. Together with the Last Confession of GEORGE BOROSKY, signed by him in the Prison, and sealed up in the Lieutenant's Packet. With which an Account is given of their Deportment both in the Prison and at the place of their Execution, which was in Pall-Mall, on the 10th of March, in the same place in which they had murdered Thomas Thynn, esq. the 12th of February before, 1682. Written by Gilbert Burnet, D.D. and Anthony Horneck, D.D.

An ACCOUNT *of the Deportment of Captain* VRATZ, *Lieutenant* STERN, *and* GEORGE BOROSKY, *the Murderers of Tho. Thynn, esq. both in the Prison, and at their Execution.*

FOUR days after the barbarous murder of Mr. Thynn, which filled all people's minds with a just horror at so vile and inhuman a fact, I was desired to go and visit the prisoners. I carried Dr. Horneck with me, because I heard that Borosky the Polonian spake no other language but Polish and High Dutch. We waited on the captain, but he was unwilling to enter into much discourse with us; and adhered to what he had confessed before the council, that he only intended to fight with Mr. Thynn, and that the Polonian had mistook his orders when he shot him. The lieutenant said at first nothing, but that he was in the company of those that committed the fact, without intention to murder any; and if for that he should be condemned to die, then said he, 'Fiat voluntas tua,' Thy will be done. The Polonian was free and ingenuous in his confession, and expressed great sorrow for what he had done. But within a few days I went again and found the lieutenant wonderfully touched. He told me that the morning after he was first taken, he awakened full of horror for what he had done, and the first thing that came in his mind was the 9th verse

of Ps. xxxii. "Be ye not as the horse and the mule which have no understanding, whose mouth must be held in with bit and bridle." This he applied to the irons in which he was, and then began to reflect what a beast he had been, and that it was fit he should be shut up in a prison, and fettered as he then was; upon that he looked back with horror on what he had done, and began to cry earnestly to God for mercy.

He continued some days in doubt whether he ought to confess or not, and was in that anxiety when I saw him first, which made him say nothing at that time; but he said afterwards he found such inward compunction in his mind, that he wished to die; he grew weary of life, and hated himself so much that he was glad to do every thing that was lawful, which might be a means to bring him to be a public example, and to suffer in this world for his sin. Upon that he made his confession to the justices of peace, and found himself much at ease when that was done. He turned himself after that wholly to God, and found that then he was entirely out of the snares of Satan, and the hold which the Devil had of him. All the rest of the time of his imprisonment, except a few hours of sleep towards the mornings, he spent in reading the Bible, and some other good books, particularly Dilhereu's Way to Happiness, in High Dutch, which he valued highly, and Thomas a Kempis's book of the Imitation of Christ, and some other books of devotion. He thought it was also fit for him to leave in writing a warning behind him to others to learn by his example. He was not bred to letters, and so he said he knew what he should write, would appear simple to those that delighted in learning, or polite language; but he said he would write from his heart, and prayed God it might have a good effect on others. He had travelled up and down Europe 23 years, being then in the 42nd year of his age, and he had observed many things though he had no literature; so he said he would leave an exhortation to all sorts of people with whom he had conversed, and touch those sins which he himself had known many of them guilty of; and he said that if his writing should become public in Germany, or in other places where he had been, he was confident that many might read it, who would know for what reason he had writ many passages in it, and might perhaps be moved to reflect on those sins of which they knew themselves guilty, and would understand his meaning better than any others could. When he had writ it, he gave it to me four days before his execution: he had dashed and changed it in many passages, which he said he writ at first, when there was yet too much of the spirit of the world in him, but he had reviewed it, and had corrected it in the best manner he could. He said he had never writ so much in his whole life, and so he did not doubt, but there would appear great weakness in some parts of it, but he had writ it in the simplicity of his heart. To this he added a short account of his life, and a confession of the crime for which he was to suffer

He often wished that from him, all that stood might take heed lest they fell, for once he thought himself as little capable of committing such a crime, which should bring him to such an end, as any man was. He was the son by the left hand of a baron of Sweden, who was made a count before he died; but he did not carry his name, because he was not legitimate; and he would not have his father's name to be published, because he was now such a reproach to it: He applied himself to the war, but in all these 23 years in which he had been travelling up and down the world, he had led a much more innocent life than might be guessed from such a conclusion of it. He had early a sense of the fear of God before he came abroad into the world, which never left him quite till a few days before this fact; but was always such a curb on him, that he never fell into those sins that are too common among those that follow the war. He was so little guilty of plunder or oppression in his quarters, that he said he was sure less than 20 crowns would pay all that had been ever taken by him. He was never guilty of any act either of cruelty or treachery, of rapes or blasphemies, was never false at play, had not the custom of swearing, nor did he fail daily to pray to God. He had always a compassionate nature: He was not a little lifted up with the courage that he had shewed on many occasions, and had been very sensible of all those things which are called points of honour: he was for many years a Papist, when he served in Flanders, but he said he was never perfectly satisfied in his own mind with that religion, and detested the idolatry that he saw in it. But he was much corrupted with that principle which is too common in the world, that if a man was honest, and good, he might be saved in any religion: and that it was fit to be of the religion of the country where one lived: Yet he said he could never look on popery but as a contrivance of priests for governing the world. About a year ago he changed his religion and returned to be of the Ausburg Confession. Last summer he came to England, being then out of employment, and intended to have got into the Guards; he grew acquainted with (or found) captain Vrats here, for I do not remember well whether he knew him first here or not.

For the particulars of his confession I refer the reader to his own paper, only one passage which he has not mentioned will shew clearly the temper of his mind, when he writ it: He told me that after the captain and he had talked of sundry poignards for giving Mr. Thynn the fatal stroke, the captain spake to him one day of a musquetoon, and told him they were now resolved to do it by that: he answered, that he thought that was by no means a proper instrument for it, since it would be seen in a man's hand before it could be discharged, and so they might be catched before the business should

be done, therefore he thought a pistol was much better: but the captain answered, That the count's council were of another mind; and when the lieutenant asked who they were, he named three outlandish men. But three or four days after that he told me, That though that passage was very true, yet he did not know but the captain might only name those persons to amuse him, and he did not believe it was true of one of the three; and if it was not true of him, then there was reason to doubt if what he said of the other two was true: and therefore since it might have been said only to deceive him and since his naming them would cast a slur upon them, he thought he ought to be so tender of their reputation as not to publish their names. This will shew both the strictness of his conscience, and the soundness of his judgment: and that he would not say a thing though it was true, in so far as he said it, unless he had believed it was true in itself.

He told me that for some weeks before the fact was done, he fell under a darkness and stupor in his mind, which he could compare to nothing but the sense a man has when he is half asleep: He continued to say his prayers, but it was only as a child repeats a lesson by rote, for he had no sense of God all that while; and he lamented much that he had not read any thing in that book of Dilherens, written much like our Practice of Piety, which he had carried about with him two or three years.

He was so little able to judge of things aright, that he thought he would be free of the crime, if he did it not with his own hand, and because he abhorred the acting it himself, he fancied he would not be guilty, if he only went in the company of those that were to do it. When the fatal day came in which it was done, he said, though he was not drunk, yet he was like one drunk, for he was almost stupid: it was on a Lord's-day, which he had much and often prophaned, and on that day in particular, he had not worshipped God neither in public or private. The captain desired him to go with him and fight with Mr. Thynn. (I think it was near six o'clock at night, but am not sure as to the hour). He confessed he believed it was designed to act what followed, for he saw the musquetoon in the hand of the Polander, and he remembered well the use for which it was bought, but he still resolved that he would do nothing, but fight, if there should be occasion for it. He had delighted much in horses, and had a great opinion, that there was some sagacity in them; so the dulness of his horse in following Mr. Thynn's chariot all along Pall mall, made some impressions on him: for though he used the spur pretty smartly, yet he could not get him to follow close. That and a disorder in his own mind made that he was almost twenty paces behind when the fire was given, which had that deplorable effect on that unfortunate gentleman. He told me even that did not awaken him, but his stupor continued so, that some little time past before he offered to fly away; and then his horse without the spur, was quick enough. He was not after that affected with it, but spent that night almost as ill as he had done the day; nor was he recovered of that stupidity till the second day of his imprisonment.

He said he would have writ nothing concerning the fact, if his whole confession had been read at his trial; but that not being done, he thought it fit for him to leave it behind him to the world, that the whole truth of that matter might appear: but he professed often, that he did it not out of any resentment to any person whatsoever; and though he looked on the captain as the fatal instrument that had drawn him into this sin, and this misery that followed it, yet he ceased not every day to pray for him: when sentence was pronounced, the captain reproached him, and called him with some scorn a murderer: He said, that touched him very sensibly to see him that was the cause of his ruin insult over him; Yet he often asked news of him, whether he was touched with a sense of his sin or not? and when he understood that he continued still to deny all, but only an intention to fight with Mr. Thynn, he desired that he might be suffered to go to him and speak with him; for he said, though others might speak much better, yet he hoped he might say somewhat that would be more effectual: So on Wednesday the 8th of March, he was carried to him; I warned him before hand, that the captain would perhaps use him roughly, for he was often upbraiding him for his ingratitude, and for having accused him falsely: But he answered me, that he went to see if he could be a means to do him any good, and not to dispute a matter of fact with him, which he knew in his conscience was true: and if he saw there was no appearance of doing any good to him, he would soon leave him. In his way to him he was to go up some stairs and pass through the chapel, and then to go down; so he told me he was going up to the house of God, but he should go higher within two days, to a house not made with hands. Dr. Horneck was then with the captain, and prepared him for his coming. There was no other witness of what passed between them in that short interview but he only. He told me afterwards, that the lieutenant spake to the captain with great humility, he told him, he heartily forgave him all the injury he had done him, by drawing him into this business, he knew he had said nothing but the truth, he exhorted him to repent, that so he might find mercy at God's hands. But the captain fell in some passion, and said, he lied, and gave him other reproachful words; upon which he left him. When he came back to his chamber, he told him how sorry he was to see the captain in such a condition; but he said, though at another time he could not have endured such reproaches from the greatest man in the world, yet he felt no resentment in his mind at what he had said to himself, and added, that by bearing this in such a manner, he hoped he had got two steps higher in his way to Heaven.

When I replied that it was a good sign, that he had learned to be like his Saviour, who when he was reviled, reviled not again: he said, Ah! Such a miserable criminal as I am, must not be in any thing compared to my blessed Redeemer. He desired that the Polonian might be suffered to stay all the day long in his chamber, for he found he had a mind well disposed, but was ignorant. So he took great pains to instruct him: They were together the last night of their life, in which as the one slept the other watched and prayed; for the lieutenant said to me he thought it was not fit that both should be together asleep that night; but that all night long either the one or the other of them should be constantly calling upon God. He expressed not the least desire of living any longer: He never once asked me if I thought a pardon might be obtained: On the contrary he said, he deserved to die, and desired it as much as he had deserved it. He only wished that if it could be obtained, his head might be cut off; but he easily acquiesced, when I told him that was not to be expected. He often blessed God for bringing him to a prison, and that he had not made his escape to have led a wicked life any longer. After he had been under great horror for almost a week, he found great quiet come instead of it, chiefly after he had disburthened his conscience by a sincere confession; at last it grew upon him to a joy in God, and at the approaches of death,

The night before he suffered, he told me he was languishing through desire to die; he was now so settled in his assurance of God's goodness to him, that he was longing to be with him; he considered that night as the eve of his wedding, and therefore it would seem tedious to him. A little while after, he said, to-morrow is the last battle I shall fight, my enemy shall gain the camp, the tent, I dwell in, but I shall by the grace of God win the day. And when he spoke of that at another time, he looked up to God, and said, I go to fight with thy weapons, and thy armour, and when I have overcome I will come and offer them up to thee. He had that day received the sacrament with great devotion, and said, Now I have got my pass-port, and I long to be gone. He was much rejoiced to hear that night that the captain was in a better temper than he had been in formerly; for the minister of the Ausburg confession in London, told him in my hearing that the captain had confessed that he had drawn them into this snare, and had engaged them in this murder. The captain also sent a kind message to him, and gave orders for every thing that concerned his burial; upon which he sent a return to him full of great affection. This made him change a resolution he once had, of speaking somewhat concerning the murder at his execution. He said there was nothing material in his last confession that was not in his first, taken by the justices of peace, so there was no need of making any other public declaration; and he thought if he said any thing that might reflect on the captain, it would perhaps put him in some disorder, and he would not venture the being discomposed in the last moment of his life; therefore he resolved to seal up all, and give it to me at the place of execution. He had shewed it four days before to one Mr. Essart, a German, of Covent garden, and had ordered me to let him copy it. He had likewise shewed it to Dr. Horneck, and it was almost all copied out before he died.

In this temper I left him at night, but found him much better on the morning of his execution. He had slept three hours, and was then well in his heart and health, for the night before he was very faint. He told me now he was full of joy, he was going to exchange a prison for a palace; A prison that has been to me better than any palace, for here God has touched me, he has drawn me, he has quickened me; and now, O God, I come to thee, to live with thee for ever. He broke often out in great transports of joy, he said this that follows so often both in French and Dutch, that I could not but remember it well: O my God, my good God, my infinitely good God, how do I love thee! I bless thee, I will bless thee as long as I live, yea, Lord, I shall sing of thy praises for ever: for thou hast blessed me wonderfully: thou hast put many good inclinations in me: thou hast often touched my heart with the motions of thy holy spirit: but above all thy blessings, for this I will bless thee, that when I had forsaken thee, and was at the gates of hell, that thou hast brought me from thence, and hast now brought me even to the gates of heaven.' Open them, O Lord, and I will enter in, and praise thy name for ever. I bless thee that thou hast chastised me with thy rod, but thy rod is a rod of mercy; and now thou hast done so much for me, O give me a greater sense of thy love, that I may praise thee with my whole soul, and from the very bottom of my heart.

This he repeated often in such a manner that he seemed as one ravished for joy. He wept, but he told me these were not tears of sorrow, but flowed from the abundance of his joy. He and the Polonian sung the 51st Psalm in High Dutch, three several times; and I saw him particularly touched, when he sung those words, "Deliver me from blood guiltiness, O God, thou God of my Salvation." He spent the rest of the time in prayers and ejaculations. A gentleman came in and asked how he did? he answered him, He thanked God, well, his friend had sent to call him to come to dine with him, and he was ready to go. And when it was told him he was now to fight his last battle, he answered, The battle was already fought, there was but one shock behind, and he was sure he should overcome. His heart was so full of the sense of the goodness of God, that he could now complain of nothing, or desire nothing but that he might be able to rejoice more perfectly in God and to praise him more. He longed much for the officers that should carry him away, and looked with great

cheerfulness at me when he saw them come to lead him out. When his irons were taken off, he told me, some of his fetters were taken from him, but he had others yet about him that should be likewise taken off very speedily, but I have chains upon my soul which shall draw me up to heaven. He told me that he intended to make a short exhortation in the cart, chiefly to have warned the people not to cast off the sense of God, and particularly that as they did their own business all the week, that they would do God's work on the Lord's-day: and learn from him what the ill effects of profaning that day were. He was likewise to have exhorted them not to think there was any wickedness so great, but if they did cast off God, and were forsaken of him they might fall into it. He had been once in a good way, but had left it, and they saw the effects of that; yet God had mercifully brought him back to it, and therefore he intended to pray them to fear God, and keep his commandments, and it would be well with them.

This was the substance of that which he had purposed to say; but when he came to the place, the noise was so great there, that he said he would speak nothing, but left it to me to publish what I knew he had intended to say; and so he continued in his devotions, reading some prayers and hymns out of Dilheren's Book; and in several passages as he read them, I perceived great joy in his looks; he told me his mind continued firm and settled in his joy in God; and so he went on a while reading, at last he threw his book to me, and wished me to give it to some good soul. He said a few words to the captain in High Dutch, which I did not quite understand, but by his manner I judged it was a declaring that he forgave him, and died in charity with him, to which the captain made a short answer that seemed to me a return of his kindness. But the croud was such that the German minister could not possibly come to the place, so this was lost.

And this is all the account I can give of lieutenant Stern; it is the substance of many and long conversations I had with him; French was the language in which we discoursed, and he expressed himself very well in it.

I cannot give so long an account of Borosky the Polander, for all my discourse with him was by an interpreter, and the lieutenant did for most part interpret between us. I found that the course of his life had been very honest and innocent; and that before he committed this barbarous act, he had not been guilty of any enormous crime in his whole life: and that particularly the last year of it, he had a greater sense of the fear of God than formerly, so that he had reformed his life to such a degree, that he had not been guilty of one act either of drunkenness or uncleanness, of swearing or lying, and that he had constantly prayed to God. He said, That when count Coningsmark made that proposition to him, which he told me much more largely than I find it is in his confession, he was troubled at it, and went into another room and kneeled down and said the Lord's Prayer; but concluded that since his mind was not fortified against it, that God had appointed that he should do it. He said in his country they were bred up in such an opinion of their duty to their masters, and of their obligation to maintain their honour, that he believing the relation the count made of the English gentleman (for Mr. Thynn was not named to him) having intended to murder him, and having set six assassinates on him, thought himself in some sort absolved, if he should revenge such an attempt. He was also deluded by what the captain told him, that if they happened to be taken, he only and not the Polander would suffer for it; so that he was easily wrought on to do it. He was not spoke to by the count till one o'clock on Sunday, but whether in the mo[illegible] afternoon I do not know, and it was acted that same evening, so that he was never alone, nor had he any opportunity of recollecting himself, but was hurried into it blindly.

He told me one passage that befel him after his imprisonment, which he firmly believed was real, and not the effect of a disturbed fancy: He said, being shut up in his chamber a day or two after his imprisonment, he thought in the night being fully awake, that one opened the door, which he fancied was his keeper coming to him; but when he looked at it, it was a woman who had appeared sometimes to him before in Germany, upon some extraordinary occasions; she looked on him, but spake nothing to him; and vanished. He verily believed this was sent from God to him, to touch his heart; and whether it was real or only imagined, it had certainly a very good effect on him: For from that time he was wonderfully changed.

He said he continued about four days as in hell, by the rack that he felt in his conscience, but after that he came to have great quiet and assurance of God's mercy. He had no fear of death, but every time I asked him concerning it, he said he was ready for it, and longed for it more than ever he did for any thing in his life: he assured me he had from his heart forgiven both the count and the captain, and that he prayed earnestly for them.

The lieutenant often told me, That he had an excellent soul, and that though he had not much knowledge, yet he himself learned much from him; for he had the simplicity of a little child in him; and a love to God, and to his Saviour that passed all knowledge: so that he spent almost his whole time in praying and praising God: he went out of the chamber when he was called on by the officers to his execution, with great cheerfulness; and by his looks and carriage in the cart expressed a great sense of his condition: He seemed to have no sort of fear in him, nor did he in the least change colour, or was he at all terrified.

In the last place, I must say somewhat of captain Vratz, which I do unwillingly, because some passages are not such as I can reflect on with any great satisfaction. It is certain that never man died with more resolution

and less signs of fear, or the least disorder. His carriage in the cart both as he was led along, and at the place of execution was astonishing, he was not only undaunted, but looked cheerful, and smiled often: When the rope was put about his neck, he did not change colour nor tremble, his legs were firm under him: he looked often about on those that stood in balconies and windows, and seemed to fix his eyes on some persons; three or four times he smiled; he would not cover his face as the rest did, but continued in that state, often looking up to Heaven, with a cheerfulness in his countenance; and a little motion of his hands. I saw him several times in the prison; he still stood to the confession he made to the council till the last day of his life: He often said to me he would never say any thing but what he had said at first.

When I was with him on Sunday before his death, he still denied all that the lieutenant and the Polonian had said, and spake severely of them, chiefly of the lieutenant, as if he had confessed those things which he then called lies, in hopes of saving his own life by it, or in spite to him that he might not be pardoned: and all I could say could not change his mind in that. I told him it was in vain for him to dream of a pardon, for I assured him if any kept him up with the hopes of it, they deceived him. He had two opinions that were as I thought hurtful to him; the one was, That it was enough if he confessed his sin to God, and that he was not bound to make any other confession; and he thought it was a piece of popery to press him to confess. He had another odd opinion also of the next state: he thought the damned were only excluded from the presence of God, and endured no other misery, but that of seeing others happier than themselves: and was unwilling to let me enter into much discourse with him for undeceiving him: He said it was his own affair, and he desired to be left to himself; but he spake with great assurance of God's mercy to him.

I left him when I saw that nothing I could say had any good effect on him, and resolved to have gone no more to him; but when I understood by the German minister, and by the message which I heard delivered in his name to the lieutenant and the Polander, the night before his execution, that he was in another temper than when I saw him last, I went to him; he received me more kindly than formerly: most of his discourse was concerning his going to the place of execution, desiring that it might be in a coach and not in a cart: and when I prayed him to think of that which concerned him more, he spake with great assurance that it was already done, that he knew God had forgiven him; and when I wished him to see that he might not deceive himself, and that his hope might not be ill-grounded, he said it was not hope but certainty, for he was sure God was reconciled to him through Christ. When I spake to him of confessing his sin, he said he had written it, and it would be published to all Europe, but he did not say a word concerning it to me; so I left him, and saw him no more till I met him at the place of execution: When he saw me, he smiled on me, and whereas I had sometimes warned him of the danger of affecting to be a counterfeit bravo, (*faux brave*) he said to me before I spake to him, That I should see it was not a false bravery, but that he was fearless to the last. I wished him to consider well upon what he grounded his confidence: he said, he was sure he was now to be received into Heaven; and that his sins were forgiven him. I asked him if he had any thing to say to the people, he said no. After he had whispered a short word to a gentleman, he was willing the rope should be tied to the gibbet: He called for the German minister, but the croud was such that it was not possible for him to come near. So he desired me to pray with him in French, but I told him I could not venture to pray in that language, but since he understood English, I would pray in English. I observed he had some touches in his mind, when I offered up that petition, that for the sake of the blood of Christ, the innocent blood shed in that place might be forgiven; and that the cry of the one for mercy might prevail over the cry of the other for justice: at these words he looked up to Heaven with the greatest sense that I had at any time observed in him. After I prayed, he said nothing, but that he was now going to be happy with God, so I left him. He continued in his undaunted manner, looking up often to Heaven, and sometimes round about him to the spectators: after they had stood about a quarter of an hour under the gibbet, they were asked when they would give the signal for their being turned off, they answered that they were ready, and that the cart might be driven away when it pleased the sheriff to order it; so a little while after it was driven away, and thus they all ended their lives. It is possible that conversing in French, as we did, some small mistakes might have been made, either by them in expressing themselves, or by me in not understanding them right: but I am sure they could not be material; for I took care to make them repeat what they said that was of any importance often, and in different words; so that any errors that may have been committed are inconsiderable.

G. BURNET.

March 11, 1682

Dr. HORNECK's *Account of what himself observed in the carriage of the late Prisoners.*

THE Lieutenant and Polonian, the authors of the following papers, having acquainted me with their intent to have them published to the world, to testify the sincerity of their repentance: I was very willing, at the desire of Dr. Burnet, with whom they intrusted them, to be instrumental in the translation, and to take this opportunity to give my sentiment of the

behaviour of the respective prisoners. The first time the doctor and myself went to visit them, we saw no sense of the crime in any of them, but the Polonian, who professed his sorrow, and gave me a large account of his condition, and how he came to be drawn into the barbarous murder, by the captain: adding, that whatever the captain might say in his own vindication, that it was through his servants *mistake that the fact was done; if he had a thousand lives, he would venture them all for* this truth, that the captain did peremptorily bid him fire upon the coach, and kill the gentleman that was in it. And that he was so far from mistaking his command, that after reasoning with him about the barbarousness of the deed, the captain bid him not trouble himself about that, but do what he was commanded. The lieutenant, when I told him that according to our laws, men present at a murder committed were liable to the same penalty with the actors: Replied, If that be your law, I have nothing to say against it. And at that time he seemed to have no great remorse, which made us leave him after some exhortations to repentance, and consideration of his ways.

The captain at the same time, hard as flint, entertained us with a discourse of his resolutions to believe himself innocent, to defy death, and to fancy that if his judges would be impartial, they could not blame or condemn him. So we left him. The second visit I made them, was in a few days after, when the lieutenant sent for me: and being then to pass by the captain's chamber, I thought fit to call upon him, before I saw the other, and here repeating my former counsels to him, and putting him in mind of the all-seeing eye above, who knew his crimes, though he did conceal them from man; he was pleased to tell me, that he had far other apprehensions of God than I had, and was confident God would consider a gentleman, and deal with him suitably to the condition and profession he had placed him in, and would not take it ill if a soldier who lived by his sword, revenged the affront offered to him by another. I replied, that there was but one way to eternal happiness, and that God in his laws had made no exception for any sorts or degrees of men; and consequently revenge in a gentleman was a sin, God would not pardon without true repentance any more than he would forgive it in a peasant. He asking me hereupon, What repentance was? I told him it was, so to hate the sin we had done, that for the future no argument should prevail with us to commit it again. To which he said, That if he were to live, he should not forbear to give any one as good as he brings: with some other expressions, which I am loth to repeat, for they made me so melancholic, that I was forced to leave him. Yet I bid him consider of what he had said, as he loved his own soul.

I went from thence to the lieutenant, in whom I found a very great alteration, and saw now several good books, and the Bible among the rest lying before him, and he now was readier to confess his guilt, than I to exhort him to a free confession; several things he had said to Dr. Burnet, he expressed now to me, adding that it was God's just judgment upon him to let him fall thus: for when he consented to engage with the captain in the fatal enterprize, he had not said his prayers, nor read in his beloved book, 'Dilheren's Way to Eternal Happiness,' in a month before; which two *things if he had continued to do with that devotion he used formerly, the Devil could not, and should not have persuaded him to come* into such a desperate confederacy. I advised him to repeat Psalm 51, often, as being most suitable to his condition; and directed him to other prayers in a book, which the Lutheran minister had lent him. He now told me how he was concerned for the captain, and cried out, Oh! this hard-hearted captain, I pray for him day and night, that God would turn his heart and melt him, and make him sensible of the errors of his ways. He professed that he did not desire to live; all the favour he begged of the king, was, that he would cause him to be beheaded, for the reasons mentioned in the preceding papers. Yet he hoped his fall was permitted by Almighty God, to bring him to a true sense not only of this, but of all his other sins; and that God suffered him thus to be thrown down, that through that toss he might rebound the higher. And that though he had walked in the dark, yet he doubted not but God would draw light from that darkness. He protested at that time upon my expostulations with him, that it was not approaching death, and the punishment that was like to attend him in this world that moved him to repentance, but the blackness of the crime, and his offending a gracious God, and forgetting his dear Redeemer's precepts. And here he broke forth into holy ejaculations fit for a Christian and a true penitent. And when among other passages I minded him, that it would not be long before he would come to his trial, and so to his execution: He cheerfully replied, That he was ready to obey God's summons. And whereas I told him it would be within a few days: He said, he should be content if it were within a few hours. He then shewed me the places in the little book, he had by him, 'The 'Way to Eternal Happiness,' which gave him the greatest comfort, and prescribed him most excellent directions. The book treated of the nature of a true Repentance, of Confession to the Ministers of the Gospel, of the Lord's-Supper, and the Rules of a Christian Life; to which are added several meditations proper for Festivals, prayers suited to all conditions; and a very pathetic Sermon on the Passion of Christ; all which he said were a great support to him in his present condition, which he deplored chiefly, because he had made so bold with God, who had manifested himself to him upon many occasions. I asked him whether he had been seduced by the Count or by the Captain? To which he answered, That he had been in the Count's company twice, but the

captain would not let him know that it was the count, yet he believed it was he, having formerly seen him, and that the captain still told him that he had a quarrel with such a gentleman.

I went from thence to the Polonian, whom I found engaged in reading a German book, containing prayers and devotions, fit for a penitent, which he told me he was repeating to himself day and night. I gave him such heads of contemplation, as I thought proper for his condition and capacity, exhorted him to recollect himself, and to find out what other sins he had formerly lived in, it being not sufficient to deplore one, but all he could remember upon serious examination, which he promised me to do, and so I departed.

The last time I was with them was on the 8th of March, and while Dr. Burnet went to the lieutenant, I visited the captain; whom when I had saluted, I told him I hoped he had taken his dangerous condition into consideration, and wrought himself into a greater sense of his sins than I could observe in him when I was last with him. He said he knew not what I meant by this address. I then explained myself, gave him to understand that I spake it with relation to the late great sin he had been engaged in, and that I hoped his approaching death had made him more penitent than I had found him the other day. To which he replied, That he was sensible he was a great sinner, and had committed divers enormities in his lifetime, of which he truly repented, and was confident that God had pardoned him, but he could not well understand the humour of our English divines, who pressed him to make particular declarations of things they had a mind he should say, though never so false, or contrary to truth; and at this he said he wondered the more, because in our church we were not for Auricular Confession. He guessed indeed, he said, what it was we would have him declare, viz. That count Coningsmark had been the contriver of the murder, and had been in consultation with him about compassing his design, and prompted and bribed him for that end, which falshood he would never be guilty of, if he had never so many lives to lose. He understood, he said, That the lieutenant had been tampered with, and by promises of a decent burial enticed to confess things notoriously false; as that he should shew the said lieutenant a letter signed by count Coningsmark, to engage him in the business, and offer him money to stab Mr. Thynn, &c. But as for his part, he was resolved to confess no more, than he had already declared publicly before the council.

I let him run on, and then told him, that he was much mistaken in the divines of the church of England, who neither used to reveal private confessions, nor oblige offenders in such cases to confess things contrary to truth; that this was both against their practice and their principles; the confession I said he was so so often exhorted to, was no private but a public confession, for as his crime had been public, so his repentance and confession ought to be public too; and in that he was loth to come to it, he gave us but too much occasion to suspect, that his pretended repentance was not sincere and cordial; I told him that in such wrongs and injuries, as he had done, there was either restitution or satisfaction to be made: at which word he replying, how he could make restitution now Mr. Thynn was dead? I answered, because he could not make restitution, that therefore he should make some satisfaction, and this he might do by a free and full confession of his sin, and of the cause of it, and who they were that put him upon it: I added that where true repentance melts the heart, after such commissions, there the true penitent was readier to accuse himself, than others to charge him with the crime, and would have that abhorrency of the sin, that he would conceal nothing that served either to aggravate, or expose it to the hatred of all mankind; and that it was an injustice to the public, not to betray the complices, and assistants, and occasions in such heinous offences. I told him, he seemed to talk too high for a true penitent, for those that were truly so, were exceeding humble, not only to God, but to men too; and one part of their humility to men was, to confess to them, and to their relations, the wrong they had done them: Whereupon he answered, that it was enough for him to be humble to God; but he knew of no humility he owed to man, and God he believed had a greater favour for gentlemen, than to require all these punctilios at their hands; and that it was absurd to think, that so many thousand gentlemen abroad in the world, that stood upon their honour and reputation as much as he, should be damned or for ever miserable, because they cannot stoop to things which will prejudice and spoil the figure they make in the world: As for his part, he said, he believed Christ's blood had washed away his sins as well as other mens, for on this errand he came into the world to save sinners: He was indeed sorry Mr. Thynn was dead, but that was all he could do. I told him, that Christ's blood was actually applied to none but the true penitent, and that true repentance must discover itself in meekness, humility, tenderheartedness, compassion, righteousness, making ingenuous confessions, and so far as we are able, satisfaction too, else notwithstanding the treasure of Christ's blood men might drop into hell.

Upon this he replied, that he feared no hell: I answered possibly he might believe none; or if he did, it might be a very easy one of his own making. He said, he was not such a fool as to believe, that souls could fry in material fire; or be roasted as meat on a great hearth, or in a kitchen, pointing to the chimney. His belief was, that the punishment of the damned consisted in a deprivation of the gracious and beatific presence of God; upon which deprivation there arose a terror and anguish in

their souls, because they had missed so great a happiness: He added, that possibly I might think him to be an atheist, but he was so far from those thoughts, that he could scarce believe, there was any man so sottish in the world as not to believe the being of a God, gracious and just, and generous to his creatures: nor could any man that was not either mad or drunk, believe, things came fortuitously; or that this world was governed by chance. I said, that this truth I approved of, and was glad to see him so well settled in the reasonableness of that principle: And as for material fire in the other world, I would not quarrel with him for denying it, but rather hold with him, that the fire and brimstone spoken of in scripture were but emblems of those inward terrors which would gnaw and tear the conscience of impenitent sinners, but still this was a greater punishment than material fire, and this punishment he had reason to fear, if he could not make it out to me or other men, that his repentance was sincere.

Hereupon he grew sullen, and some good books lying upon the table, one of which was, Arnts true Christianity, he turned away from me and seemed to read in it, and after a short pause he told me, That he understood the lieutenant's papers were to be printed, wherein there would be part of count Coningsmark's letter, with some other circumstances reflecting on the count and himself; but if they were printed, he would print his own story too, which should undeceive the world in the fancies and opinions, the lieutenant's papers should draw them into; and in that paper he would set forth the behaviour and manners of the English clergy, and the strange ways and methods, they take with poor prisoners to extort confessions from them. As for the lieutenant, he said, he was a fellow that was poor and wretched, and by his means kept from starving, and sometimes he was not well in his wits: that himself was a gentleman, and a man of an estate, and should leave great sums of money behind him, and that no English gentleman would have been so coarsely used in his country, meaning Pomerania, as he hath been in this; and if the lieutenant persisted in his falsities, he would die with a lie in his mouth. I said, it was not probable that a dying man, and a man that was so very sensible of his sins, and who had betrayed nothing of any disorder in his carriage during his imprisonment, should tell and aver things, which he knew to be untrue: he said, it was no strange thing in England for dying men to speak notorious untruths, there being not a few examples of those who had lately done so: I told him, it would be very fit that the lieutenant and he should speak together, and captain Richardson, I thought, would send him presently: with that he grew angry, and replied, he had nothing to say to him, nor did he care for seeing him, nor for being troubled with any English divines; they being men too inquisitive and meddling with things that belonged not unto them: and hereupon he turned away from me again to the book, that lay upon the table.

By and by the lieutenant came in with a penitent countenance, and a mortified look: the captain seeing him, grew presently choleric, and retired into a corner of the room, and then asked him, what he came to trouble him for? he did not care for the sight of him, especially since he had bespattered him so notoriously with untruths. The lieutenant very meekly told him, that they had not long to live, and therefore he was come to admonish him to repent of what he had done, and to tell him, that he freely forgave him the wrong he had done him, by drawing him into the late unhappy action: the captain hereupon called him lyar, and asked him how he durst vent such abominable lies concerning him and count Coningsmark; how he could have the confidence to tell men, that he shewed him a letter of the count's, in order to engage him; and of 400*l.* that he should offer him to stab Mr. Thynn, and talk sometimes of 400 and sometimes of 200*l.* which was a perfect contradiction; and if, saith he, I had been so base or foolish as to make you such an offer, you that were the elder man, and may be supposed to have had more wit than myself, why did not you chide and reprove me for tempting you to such dishonesty? one would think you are distracted, or had a soft place in your head; is this your gratitude to a person that had relieved you, and done you kindnesses, and are you not afraid to die with a lye in your mouth? Here I interposed and told the captain, that this wrath and anger was but an ill preparation for another world, and that greater meekness and charity would become a dying man: to this he answered, It is you divines that are the causes of this passion, by obliging people to confess more than is true. The lieutenant all this while heard the captain very patiently; professed that this was the first time that he was called liar to his face, and that which formerly he could not have endured from the greatest man, he was very willing to bear now out of respect to that God, from whom he expected pardon of his sins. And as for what he had said and confessed to other men, he took God to witness, that it was nothing but truth; and though it was possible in his confessions he might mistake pounds for dollars, that being the word commonly used in telling the money in England, as dollars is in Germany, yet he meant nothing by it but dollars; and what he had said of the different sums, was very true; for at one time he had offered him 200, at another 400, so that could be no contradiction. The captain, notwithstanding this, still called him liar, and ungrateful: while the lieutenant stood before him talking with great meekness and humility, and for the most part with his hat off, and saying to him: You know, and your conscience knows, the truth of these things, why would ye offer me these sums; you know you made me these offers; God

forgive you, and I forgive you. This said, when the lieutenant saw, that his speaking did but enrage him more, he took his leave, wishing him a sight of the error of his ways. The lieutenant being gone, I stayed, hoping this religious confidence of the lieutenant might work the captain into remorse, but it was all in vain: I persisted in my former assertions, that repentance could not be true, which was not attended with meekness, humility and patience; but he turning from me, and looking into his book, and refusing to give me an answer, I left him too, wishing him a better mind.

From thence I went up to the penitent lieutenant, where I found the Polonian too. I told the lieutenant, I was heartily glad to see his Christian behaviour under reproaches, and nothing pleased me more in matters of repentance, than humility and patience under injuries, a thing absolutely necessary where we have to deal with God, who hath been for many years patient under the injuries, we have offered to his majesty. He then vented some comfortable ejaculations, and expressed how freely he forgave that stubborn man, whom no entreaties or arguments could work upon. And while Dr. Burnet went with the lieutenant to the fire side, I entered into discourse with the Polonian, who gave me his confession in high Dutch, written from his own mouth by the lieutenant, and signed by him the Polonian. I asked him whether as he hoped for mercy of the great God, he believed the things said in that confession to be true or no? He answered yes: whereupon to be fully satisfied, I desired a German gentleman then present to read it over again in his and my hearing, and to read it distinctly, that in case there were any mistakes in it, he might rectify it; for as I was willing, I said he should clear himself, so I should be sorry, he should asperse another man, or say any thing of him, that might unjustly reflect upon his reputation: he promised me, that he would attend carefully, and take notice of every expression, which accordingly he did; and finding a mistake in the paper in point of time, he immediately gave notice of it, which I caused to be rectified; and having heard it read over before him, I charged him once more, as he was to give an account to God in a day or two, to tell me, whether things were carried on and managed in those circumstances, as are mentioned in the paper? To which he religiously answered in the affirmative. I asked him thereupon, how long he had been a Protestant of the Augsburg confession, for he had been bred a Papist? To which he answered, ever since his last sickness: which as I remember he said, was about Michaelmas last; when being told, that the Protestant religion was more conformable to the word of God, he consented to embrace it, and hath kept to it ever since. I demanded of him to tell me seriously, whether he had not led a very debauched life formerly, which made him venture upon that late inhuman enterprize? He told me no; and that he had been so far from committing any such crime heretofore, that he had had the good fortune to live with masters, who were sober, and men that were enemies to disorder and debauchery; that according to his capacity, he had always made conscience of grosser sins, and had been very punctual in saying those prayers he had been taught, either by his parents, or such persons as he conversed with; and that captain Vratz when he bid him shoot Mr. Thynn, told him, that it was here as it was in Poland, where the servant that doth his master's command in such cases, is blameless, and the master bears all the burthen; and that prevailed with him, though he found no small reluctancy in his breast, and pleaded with the captain about the heinousness of shedding innocent blood. I then endeavoured to find out what kind of repentance he felt in himself, whether it proceeded from fear of a shameful death, or from an hatred of sin and love to God; whereupon he gave me such an account as his honest simplicity dictated to him, and said, that if he were to live any longer in this world, he verily thought this one sin would keep his soul so awake for the future, that it would not be an easy matter to make him act again against his conscience: this had rouzed him, and he now perceived the sweetness of a good life, and keeping close to the ways of God. He was sensible he had deserved the punishment, the law would inflict upon him; and all his confidence was in the blood of Jesus, who knew how he was drawn in, and the plainness of his temper wrought upon by the captain's subtilty: however he freely forgave him, and commended his soul into the hands of God. And here ended my conference with the respective prisoners, having wished them the powerful assistance of God's holy spirit, I took my leave of them. The lieutenant, who in repeated words expressed his honest design in having the following papers published, desired me to go with him on Friday following to the place of execution, there to tell the spectators, what he should think fit to say to them: I told him I would very readily oblige him in his request, but that I was bound to preach that very morning, and that very hour, when he should be led to the place of execution; however Dr. Burnet, who had been his spiritual father all along, would not fail to do that last office for him, in which he rested satisfied, and with all humility, and in a penitent posture, bid us adieu.

In the translation of the following papers, I could not be curious in the stile, because I was forced to keep to the simplicity of the lieutenant's expressions: he writ not to shew his learning but his piety; having never been brought up to letters, rhetoric is not a thing, that can be expected from him. Truth sounds better from a plain man than from an orator; and the less ornament there is in a dying persons discourse, the less it will be suspected of hypocrisy. The expressions used here, speak his heart more than his fancy, and when a man is preparing for a tremendous eternity, it

would be foolish to study eloquence. The words here are not chosen, but flow naturally; and the honesty of his soul dwells in the homespun meditations. To have affected better language than himself used, had been injustice; and to say in English what he had not said in his own language, had not been to translate, but to polish his admonitions. Such a plain harangue, it is like, may be nauseous in a critical age, where learning and wit rides in triumph; yet a soul touched with the same loadstone that his was can relish the sweetness of it: himself was afraid, that the simplicity of the language would be an offence to the curious readers; and therefore begs of them, when they came to peruse it, to make greater use of their charity, than their sagacity.

The same I must say of the Polonian's confession, where you must expect no better entertainment, he could but just express his meaning, and was no greater scholar than nature had made him.

I was at first in some doubt whether I should publish the captain's answers to my queries and expostulations, because some of them savour of prophaneness: yet considering that the Evangelist hath thought fit to acquaint the world with the ill language of the one, as well as with the penitent expressions of the other malefactor, I was willing to follow that great example; hoping that those loose discourses of the man may serve as sea-marks, to warn passengers from running upon those sands. That which I chiefly observed in him was, that honour and bravery was the idol he adored, a piece of preposterous devotion, which he maintained to the last, as if he thought it would merit praise, not to recede from what he had once said, though it was with the loss of God's favour, and the shipwreck of a good conscience. He considered God, as some generous, yet partial prince, who would regard mens blood, descent and quality more than their errors; and give vast grains of allowance to their breeding and education; and possibly the stout behaviour of some of the antient Roman Bravos, (for he had read history) might roll in his mind, and tempt him to write copies after those originals; or to think, that it was great to do ill, and to defend it to the last. Whether after my last conference with him he relented, I know not; those that saw him go to his execution, observed that he looked undaunted, and with a countenance so steady, that it seemed to speak his scorn, not only of all the spectators that looked upon him, but of death itself: but I judge not of the thoughts of dying men; those the Searcher of all Hearts knows best, to whom men stand or fall. I cannot say, that I remember every syllable of the several conferences, but sure I am, I have not mistaken the sense of what he said, nay think I have kept to the very words he then used, as much as is possible. I would not wrong the living, much less the dead; but truth is a thing, which though not always conveniently, yet may lawfully be said at all times: this was all I aimed at, and because reports are already spread abroad of other discourses and expressions, this unhappy man should use to me, and how he affronted me in prison, it was fit the world should be undeceived. ANTHONY HORNECK.

At the Savoy, March 13, 1681.

For Dr. BURNET.

Sir; I heartily thank you for all your kindness; and promise myself, that, according to your word, you will publish my little writings, intended only to let the world see, that I came not into this country with a design of being engaged in the late black deed. And since the justices have not declared what I can say or did say for myself, the rabble, it is like, will be of opinion that money brought me over into these parts: In which verdict they will be undeceived, if you will be pleased to let them read in English, what I have set down in these papers. I remain, Sir, your obliged servant,

JOHN STERN.

Written in the prison, London, 1682.

The Last Meditations, Prayers, and Confession of Lieutenant JOHN STERN.

"Let God have all the Glory, and man acknowledge his own unworthiness."

I. Seek ye first God's kingdom, and his righteousness, and all these things shall be added unto you, Mat. vi. 33. I said in my trouble, I am cast out from thine eyes, notwithstanding thou didst hear the voice of my weeping. When I cried unto thee, thou didst see my trouble, and didst know my soul in adversity. Watch, and pray, that ye enter not into temptation, for the devil, like a roaring lion, walks about, seeking whom he may devour. In the third book of Moses it is written, Thou shalt bear no malice to any of the children of thy people: by these are meant our neighbours. In the first book of Moses, ch. vi. The inclinations of man, are said to be evil from his youth; but the spirit of God can endure no such maliciousness.

I have been a traveller any time these 23 years, and have perceived but little malice in my heart; though I have had too often cause and provocation, yet have I committed all to God, as the supreme judge of all. What hath brought me to this present misfortune, is known to God alone; yet I am greatly to blame, because I did not abandon the world, lived in carnal security, and minded the lusts of the flesh, more than God, blessed for evermore; for which I am heartily penitent, and I thank my God who hath brought me to a knowledge of myself, and given me his grace, to come to a true sorrow for my manifold sins; if I have been enticed, or tempted by any person to this wickedness, as is evident I have, I beg of God to pardon him, for Christ his sake, and I desire all persons, that shall read what I have written here during my imprisonment, to consider of

it seriously. Let no man rejoice at his neighbour's misfortunes; every man'slast hour is not come yet: when you see a prisoner led along, pray for him, for the same may happen to you; have compassion on your neighbours, and God will have compassion of you. Be merciful, and God will be merciful to you. I give thee thanks sweet Jesus Christ, Son of God, that thou hast given me to understand so much out of thy holy word; give me constancy and perseverance, that I may obtain the salvation of my soul. Amen.

II. God saith, "Man help thyself, and I will help thee:" but alas! while we are in this valley of tears, we think seldom, or not at all, of the divine assistance; our eyes are darkened, and we consider little besides the lusts of the eyes, and the lusts of the flesh, and the pride of life, of which Christ himself hath sometimes complained, when men have forgotten him: happy is the man that feels true repentance in his heart, Lord Jesu! give me that grace, who am the chief of sinners. God, thou hast not sent thy Son into the world to condemn sinners, but to save them; O, save me not for my sake, but upon the account of that precious blood which was shed for me on the cross.

III. I pray God, nobody may be scandalized at what I write, out let every body lay to heart what a poor sinner writes in prison. Ye children of the world, when will you bethink yourselves, and consider the things which belong to your peace, but it is hid from your eyes. O may it not continue hid from you! Keep close to the word of God, and think on the woman's seed, which was to bruise the serpent's head; be vigilant, and pray, that ye fall not into temptation; think often, that your sins are an abomination to God: take heed you give no ill example to young children, which if you do, your account will be dreadful.

IV. John, the forerunner of our Lord Christ, when he began his ministry, the first words he let drop from his mouth, was to recommend repentance unto the impenitent, Mat. iii. and Mat. iv. saying, "The kingdom of Heaven, and the day of grace is come to you, and at hand, and God offers you pardon of sin, and eternal life." In the 6th of St. Mark, the twelve apostles went out, and preached, that "men should repent;" and Acts iii. "Repent, and be converted, that your sins may be blotted out." And Acts 14. "What mean ye, sirs, we preach unto you the Gospel, that ye may turn to God." O my dear Lord Jesus, make me partaker of this conversion, for thy name's sake! Amen.

V. Acts xvii. 30. "Ye men of Athens, the times of ignorance God winked at, but now he commands all men every where to repent." Acts xxvi. 20. St. Paul shews to king Agrippa, that he was therefore called from Heaven to be an Apostle, to preach repentance both to' Jews and Gentiles. Ye that are parents, if you have children, keep them close to the fear of God; teach them the Creed, and the Ten Commandments; send them to school, and bind them out to an honest trade; be not ashamed of this, it is better than an idle life, or French gallantry, dancing, &c. Keep your children out of bad company, whether they be sons or daughters: A heathen writes, that Evil communication corrupts good manners, which myself hath had very sad experience of. Before my 23 years travel, I should have learned a trade; but it is too late now. God give me patience in all my sufferings. I hope by the help of God, I shall ere long be separated from the world; for it is my greatest desire and comfort to dwell with God. Amen.

VI. Gen. iii. God saith, "In the sweat of thy brow shalt thou eat thy bread, till thou return to the earth, of which thou art taken." Psal. civ. "When the sun rises, man goes forth to his labour;" but not to such labour as the Devil suggests and tempts men to.

VII. John xxi. "When Peter was more concerned about St. John, than about himself, the Lord said, What is that to thee?" Luke vi, It is said, "Thou hypocrite, first pull out the beam that is in thine own eye, and then thou shalt take the mote out of thy brother's eye;" and thus it is with us. The mote in our brother's eye we easily spy; but are regardless of the beam in our own eye.

VIII. Rom. xiv. It is said, "Who art thou that judgest another man's servant; he stands or falls to his own master; he shall be holden up, for God is able to hold him up" Preserve my steps, O Lord, that my foot slip not. O Lord, by thy power, strengthen the weakness of my flesh, that I may fight manfully, and both in life and death, may press toward thee. Amen.

IX. And now ye that are governors of the world, abstain from anger, exercise justice, let not the sword grow rusty in the scabbard, though you begin with mine own head; let the will of the Lord be done. Ye princes, and great lords, do the same; have an eye upon your officers, and take notice, how instead of doing justice to the widows and orphans, they go about banqueting, visiting of play-houses, playing and hunting; the rest I will not name, for fear of giving scandal to the younger sort: see that none of them take bribes, for unjust bribing cries to Heaven for vengeance. By the word Governors, I understand kings, princes, viceroys, lords of countries and provinces in Christendom; colonels, captains, and whatever titles they may have; punish none that are innocent, release rather ten that are guilty, than condemn one innocent man. Ye kings, princes, and presidents, let no proud and phantastic dresses be allowed of in your land; for through pride the angel turned devil. Ye fathers and mothers, cloath your children decently when they are little; when they grow big, they soon become bad enough. Let no man be taxed or rated above his ability; oppress not the poor, rather help him to bear his burthen as much as it is possible.

X. Let us say, out of Psal. xviii. 28. "The Lord my God turns my darkness into light." In Genesis we read, "That the thoughts of man's

heart are evil from his youth." The spirit of the Lord can take away that sinful inclination: I will say with David, Ps. lxxxi. "Create in me a clean heart, O God, and renew a right spirit within me; cast me not away from thy presence, and take not thy holy spirit from me." Out of Psal. cxv. "O Lord, not unto us, not unto us, but unto thy name, give all the honour and glory." He that is fallen into poverty, let him hope in God, he will help him. Psal. l. God himself saith, "Call upon me in the time of trouble, and I will deliver thee, and thou shalt praise me." My strength is made perfect in weakness, for Christ is good and gracious; and because he is merciful, let us call upon him; as it said, Luke xv. "Father, I have sinned against Heaven, and before thee, and am no more worthy to be called thy son, make me as one of thy hired servants."

XI. The Apostle St. Paul mentions, in a certain place, how a man may have all things, and yet have no charity. Christ also exhorts us to love one another. I may say as it is in the song, "Love is quite extinguished among the children of men." Deut. xxii. "If thou see a stranger's ass, or ox, go astray, thou shalt take them into thy house. Levit. xix. "Thou shalt bear no grudge to any of the children of thy people, which have provoked thee to anger. Prov. xxi. "If thine enemy hunger, give him meat; if he thirst give him drink." Matt. viii. and Luke vi. "I say unto you that hear, love your enemies, bless them that curse you, do good to them that hate you, pray for them that persecute you, and despitefully use you, that ye may be children of your Father which is in Heaven, who is good to the unthankful, and to the evil." Think of this, ye proud vain-glorious, and wrathful men, who say, Shall I yield? I am much better than you. Agree with your brother quickly, while you are yet in the way with him. When you come to your long home, you will be weary, and find another register or book of account before you. And here I beg, of all those who shall read these lines, if in any thing I have been against them, or offended them, to forgive me for Christ his sake.

XII. Eccles. vi. Solomon saith, "It is an evil that I saw under the Sun, and it is very common among men, that God hath given to some men riches and honour, and they want nothing that the heart desires." By such Solomon understands lords, and governors in this world: Take heed of pride, and voluptuousness, wrath and anger, for these are now become very common; and such men are apt to cry, Am not I a lord? Am not I a governor? King David was very penitent. Exod. 5. Pharaoh tells Moses, "Who is the Lord, whose voice I should hear?" But notwithstanding he must sink in the Red Sea. Take heed, the sea of sin is deeper than the Western Ocean; make haste, make haste to get into Heaven's boat, that ye may get into the ship of God.

XIII. Ye proud, who is there among you will take a view of his life? This is very usual with you to cry, I have sent my tailor into France to bring me newest modes and fashions. Thou hadst better have gone to Jerusalem, and considered the passion of Christ; and much better would it be for thee, if instead of voluptuous youngsters, thou hadst some grave ancient man about thee, whether secular or ecclesiastical; but such men must be fools among you. Gen. iii. "When Adam and Eve out of pride, affected to be like God, they were cast out from the presence of God." The Sodomites were proud, Ezek. xvi. 49. "This was the sin of thy sister Sodom, pride and idleness, and fulness of bread."

XIV. Ye officers, colonels, and great men, how do you live? When a country minister dies, to whom goes the parsonage? to him that brings most money. Ye ask not, Have you studied hard? do you live a good life? are you a good preacher upon trial? only the man saith, Here is my purse, and that's enough. The deceased parson hath a son, it is true, that is a scholar, but he hath no money, or he is too young. The widow hath divers children. Thus he pleads; and is not this a most lamentable thing? Ye generals and colonels, where are your camp preachers? I do not ask you about quarter-masters, belonging to either generals or regiments, those you do not want, for they fill your purses: And what religion are they of? why of this, to take all they can get. Who knows how long it will last? Sometimes you carry your camp-preachers, or army chaplains, in your pockets! O how do you rob God of his honour, and your neighbours of their souls! He that serves, let him serve faithfully, that he may be worthy of his salary. He that hath none, needs not trouble himself about entering into service. Ye generals, colonels and commanders, when you are in your march, or form a camp, and are either besieging, or besieged, pray remember to exercise brotherly love toward the meanest, as well as the greatest. Ye commissaries, where is the provision ye are to make for the army? Three parts of it are in your pockets; and then you give the general a present, but the poor sheep may go to grass. You countrymen (that's the word) you must pay; give what you have, and the rest you may keep; such a great man, or friend of the general, must have a safeguard. The poor widows and orphans, run about like mazed people, with their children in their arms, their hair disheveled, tears running down their cheeks like pease; and you shall not find one in an hundred that will give them one penny, though you great ones have, may be, taken possession of their cows, calves, and sheep. Your soldiers in their march, must at least have gifts brought them: Sometimes the money is drawn out of the peoples purses by dreadful oaths. In another place, you let the poor soldiers lie, as it were, on a heap, and plague the whole country; then the poor must run to the rich to borrow money of them to treat and entertain the soldiers. You great ones have abun-

dance brought into you by your officers, whereas the poor soldier must content himself with an empty house. You cause the poor people's oxen and cows to be driven away, then sell them, but the meaner sort must eat dry bread.

XV. Ye gentlemen, burgomasters, aldermen, and grand bailiffs, pity the poor in your exacting contributions. Take heed ye oppress not the widow and orphan, nor take their goods away for your private use; nor corrupt yourselves with bribes. Do you understand the Latin phrase, *Quid juris?* or the other, *Da pecuniam?* To make your own cause good, you make feasts at the public cost; and this happens often, when you are to sit as judges, either in matters of blood, or in civil causes. Before you do so, pray the Lord's prayer, and consider the import of that place, John xiii. 3, 4. "Hereby shall all men know that you are my Diciples, if you love one another;" *i. e.* do justice one to another. There are many good christians among you; but alas! far more of the other sort.

XVI. My lords, ye bishops, abbots, deans, if it be so, that in the town or country you live in, you have either for money, or kindred-sake, placed any ministers, or schoolmasters, which are not capable to look to their charge, or to instruct youth, you will have a very great account to give. Ye great ones, you should at least visit your clergy once a year; but I do not understand to what purpose you put the poor parson to the charge of a banquet, which takes off, at least, a fourth part of his income the first year, if his parishioners in the country do not help him. You should preach and examine the children, this your office requires. If the minister hath good drink in his house, he is commended; and those that love the good liquor, will commend his sermon: sometimes there is one that will give him a silver cup for his pains, and that's the humour of the world.

XVII. Ye merchants, ye know it is written, With what measure you mete, it shall be measured to you again. Live up to this rule, put not out your money to usury; content yourselves with honest gain, for all depends upon the blessing of God; unjust gains descend not to the third generation. Let every man, in his own station, take care to mind his calling, and do what he is commanded; Do not sit down and write two for one, and then lay the fault upon your man. Take heed of cursing and imprecations, whereby you endeavour to make old commodities new, especially where the buyer hath no great skill, whence he must needs be cheated; you give it him upon your word, though it is not worth a straw.

Ye seamen and skippers, how do you live at sea; take up your anchors in the name of God, and in the same name you ought to spread your sails. When the merchants grow rich, presently they must have great gardens, with delicate houses for pleasure, where they may treat their rich acquaintance; If they give at any time something to the poor in their houses, or in the hospitals, it is not much. When they begin to be merry at their feasts, then the next discourse is about their incomes. I have a ship at sea, saith one, so much I get by this voyage. Wretched man! thou talkest of thy gain, but dost not pray to God; thou mindest thy pleasure; thou dealest with the great ones in the country: sometimes thou goest abroad thyself, and courtiers do cheat thee; then thou cursest because thou canst not recover it. In travelling, men meet with variety of people. Sometimes thou hast an old mistress, her thou goest to visit; and after that hast the confidence to ask, why thy ship was lost at sea? (He that hath an honest wife, let him make much of her, for she is a rare jewel). The seamen, when they come to shore any where, nothing but drinking and carousing all night will serve them, and the glass must go round, and that is their way of living; and from hence come those many misfortunes at sea.

XIX. Ye doctors of the civil laws, proctors and advocates, it is needless to expound any thing to you out of the scripture, you are better scholars than I. Psal. xvi. It is written, "I have set the Lord always before me;" This is worth your thinking of; for there may be men among you who love to shear the sheep, so long as there is any wool upon them: many of you are squint-eyed, looking for the hand that comes with a bribe, which is a thing doth more with you, than the greatest justice of the cause that is before you. May be, there is one in fifty who contents himself with half so much as another man takes. The Holy Ghost direct your hearts, that you may mind you neighbour's good and welfare more, for that is to act like christians.

XX. Ye drunkards, ranters, and blasphemers, and underminers of your neighbours, who give ill counsel, to their ruin. Ye whoremasters, and gamesters, ye haughty, and wrathful men, I pray God send you some sparks of his grace, that you may smite your breasts, as the publican in the temple. I hope you will consider the text we read in the holy scriptures, Rev. xviii. 7. where it is said of Babylon, "How much she hath glorified herself, and lived deliciously, so much torment and sorrow give her." From hence divines do infer That every sin will meet with a peculiar punishment in hell, and consequently a proud and haughty man will have the honour of being tormented first, or before others, or will be trampled on by others. "The voluptuous will have a cup of gall given him; a drunkard be plagued with an infinite thirst," Luke xvi. 24. "The unchaste person, with putrefaction and worms, which shall break forth at the members whereby he hath sinned." Eccles. xix. 3. A slanderer, with serpents, and scorpions. There were some comfort in it, if there might be an end of this, but "as the tree falls, so it will lie, whether it fall toward the South, or toward the North," said Solomon, Eccl. ix. 3. so that no change of their torment is to be expected. The damned can get no comfort, no ease, no

mitigation of their pain; If they could bu have hopes of "a drop of water hanging at a finger's end," Luk. xvi. 24. this might yet refresh them. Rev. xiv. 11. it is said, "They have no rest day nor night, but their shame and pain shall last for ever. The smoke of their torment shall rise for ever;" read the aforesaid place, though you never read or considered it before; the door of grace is yet open. Ye drunkards, and whoremongers, ye cry, let us be merry, for who knows how long we are to live. When thou readest Prov. vi. 11. "So shall thy poverty come, as one that travelleth, and thy want as an armed man," do not take in thy meat and drink like beasts, but with consideration of the superabundant and almighty goodness and mercy of God. Tit. i. 15. 1 Tim. iv. 4, 5. Prov. iv. 17. Ecclesiasticus xxxi. 21. Luk. xxi. 34. For God's sake read these chapters, and you will see, what hazard you run in living in the world, as if there were neither heaven nor hell. There are too many, God knows, that believe all things alike. Let us confess our sins, and say, Help Lord and Father, who art good to all, and givest to all, that, we may walk in newness of life, and be zealous of good works, to thy glory, and the joy of angels, the love and education of our neighbour, and the devil's envy, that we may at last obtain the end of our faith, the salvation of our souls: and hear the chearful voice, Mat. xxv. 21. "Well done good and faithful servant, thou hast been faithful over a few things, I will make thee ruler over many things, enter thou into thy master's joy."

Great Healer of the wounds, sin makes,
In hearts with grief, and tears oppressed;
O how my soul doth pine away,
With dolours great and hard to bear!
Almighty Saviour take thou me,
And let me in thy wounds be safe;
Then then it will be well with me.
My soul, my flesh shall rest in thee.

Jonas iii. 6, 7. "The king of Nineveh, and all his people, humbled themselves, put on sackcloth, and sat in ashes." Let us put on the garment of love, of true repentance, and sorrow for our manifold sins which we have committed, and through the grace of God we shall obtain deliverance from all our sins; for which deliverance I praise him. I do already feel the Almighty God in my soul, and though I had the sins of the whole world upon my back, yet that good, that gracious God, would not let me sink under that burden, Psal. cxxx. Though our sins are multiplied, yet God's mercy is far greater; his helping hand is not limited. Let the hurt that hath been done be never so great, still he is the good Shepherd, who will redeem Israel from all his troubles and transgressions. I bless God who hath brought me to a sense of my sins; nay, I am so well satisfied (praised be his name) that though I might have half the world's goods, I would not desire to live longer. I have had little comfort in this world; now and then a body is on the water, by and by in a storm; eve by land the journey's are long and tedious. How soon doth sickness oppress us, no man is secure of his life; though a man be above an enemy, yet there is no rest. Emperors and kings rise in the morning fresh and sound, but the least change of air throws them down, and they must wait for the help of God as well as beggars. Let us therefore say with Jesus Syrach, man, think, of thy end, and thou wilt never sin; and to do so, the Lord Jesus grant us his grace, for in this I have failed fre-

XXI. Ye tradesmen and artificers, I will make but this simple remonstrance to you. Many of you complain, that you labour day and night, yet you can get nothing: it is not your labour altogether, but God's blessing that is to be regarded. For Christ saith, thou shalt sanctify the Sabbath, and on that day, go diligently to the house of God: thou shalt not swear, or curse, neither thou, nor thy wife, nor children, nor family. You should not spend so much time as you do, in taverns, for there you ordinarily stay till midnight; and ye bakers, brewers, butchers, sell, as you mean to answer it to God; for the magistrates are apt to connive at you upon the account of friendship, or some other relation, but this should not be. On Sunday morning, instead of your cups of brandy, you should take a prayer-book in your hands, and out of that instruct your children: look into Psal. 122. "I was glad," saith David, "when they said unto me, let us go into the house of the Lord? our feet shall stand within thy gates, O thou house of God!" If any of you fall into poverty or sickness, you that are their neighbours set them up again, you need not fear that this brotherly love will make you Anabaptists. Clothe yourselves and children according to your state, and condition; give to the poor according to your ability, and that is your blessing; for by this means, you will want nothing that is necessary here on earth.

XXII. And now ye prisoners, how do you behave yourselves in prison? Keep close to the Word of God, and you will receive peace and comfort: do not you read, Esa. liii. 4. "He hath surely borne our griefs, and carried our sorrows? He was stricken, and smitten of God, and afflicted:" see what he saith, Mark xiv. 34. "My soul is exceeding sorrowful, even unto death." This said Christ at that time, when for the sins of the whole world, he suffered himself to be imprisoned and bound; was not that an exceeding great love, which Christ hath expressed to all mankind! Greater love he could not shew. And this he did, that we might think of him, when any of us are taken prisoners. Let such a one examine himself, for what reason he is imprisoned; if he find himself innocent, let him have patience, let him not curse: If he find himself guilty, let him pray diligently; if the crime be great and heinous, let him pray oftener, and send up his sighs every moment to God, and he will turn all things to his advantage. Christ our

Lord, when he was taken prisoner (though we are not to be compared with him) said, Mat. xxvi. 42. "Abba Father, not what I will, but what thou wilt." Behold here his mighty love, therewith he hath loved us when we were yet his enemies! He suffered himself to be imprisoned: this is no small comfort for you when you lie in a prison; for which reason, consider seriously of it; but take heed you do not curse in prison; do not break forth into wrath and anger; be patient, confide in God, who will support you in all things, if you call upon him. Use no threatenings that in case you come off, you will remember the persons that have been the cause of your imprisonment. This makes your case but worse, commit revenge to God; for thou art not permitted to be thine own revenger, For he that judges, shall be judged. The law of God and man condemns these things; he that sins much must repent much, this is God's order, who can truly say of himself, as it is John xiv. "I am the way, the truth, and the life." And if he be the way we cannot possibly err, if we follow him; if he be the truth we cannot possibly be deceived by him; if he be the life, we cannot possibly come by any thing that is hurtful. If your flesh and blood be straitened in prison by the temptations of the devil; if the chains and shackles press hard upon you, remember the Crown of Thorns which our redeemer bore, and without any guilt of his own, Mat. xi. 28. it is written, "Come to me all ye who are weary and heavy laden, and I will refresh you:" and let this be for your comfort. Nor is it enough that a man is laden with bonds and chains, for that is only a temporal punishment; you must at the same time, take your hearts prisoners by the word of God. Sigh therefore, with David, and say,

Look not upon my sins, O God,
Make pure my heart, make clean my soul.
A new gloss on my spirit set,
And from thy presence chase me not.
Thy Holy Spirit grant thou me,
With peace and health refresh thou me.
To please thee, make me willing, Lord!
Amen.*

Thus ought men to live in prison, upon which by the grace of God, remission of sins must necessarily follow.

XXIII. I had almost forgotten the common soldiery, which I would not willingly do, for there is great philosophy to be found among them, i. e. There is nothing in the world, but you may find it among soldiers; you find learned and unlearned, good and bad, holy and profligate men, you find some who really aim at the kingdom of God, and others who suffer themselves to be blinded by the devil, and live according to his will; nay many strangers which no man knows who they are; one fears God, another blasphemes him: In a word, you have among the soldiers pious, and impious men? and if a soldier leads a good life, it may be said to be stricter than a Capuchin's, but such a one is a creature very despicable, yet more or less according to the country he lives in. When an enemy knocks at your gates, ye great ones, and you can but get soldiers you rejoice exceedingly; but if God give you peace again, I am sure, you have no command from him, that they who served you faithfully, should be cashiered and sent away without pay, and those which stay behind, should scarce have bread enough to eat. I suppose they are creatures created of God, and redeemed as well as you. He that wrongs them wrongs God in heaven; here I must die for a man's fortune, with whom I never changed word all my life, for a woman which I never saw; nay, for a man that is dead, whom I never had a view of; and are not these three very great things? I leave it to every man's consideration; it would grieve a man, I confess it is a little hard; yet be it as God pleases, I have entirely resigned myself to his will. And now I will tell you all that I have loved in the world. Next to God and his holy precepts, I have loved my neighbour till the late misfortune befell me; I have ever had a great fancy to travel, and from a child have had inclinations to be a soldier, which desire, as that of travelling, hath yet much decreased with time. A courtier's life I never much affected, because the court is generally crouded with a sort of politicians, which are no better than dissemblers. A learned and experienced man I always had a very great esteem for whether he were rich or poor; for I have met with both sorts. Lastly, I have had a peculiar love for three things, yet have been most miserably cheated by them; yea these three were instruments, I made use of, that day I came into the late misfortune. I thought I had an excellent friend in the captain, but have been sadly deceived in him, and seduced by him, that is one thing. Secondly, I have been no hater of women, and here also I have been cheated. I have also had a great love for horses, and when that late misfortune began, was upon the back of one.

Let every pious christian take a view of the world, let him love nothing, that is in the world, but God alone; let him do no wrong; nay, let him not permit another person to do that which he can hinder, especially where the poor and meaner sort are concerned; and he that is rich, let him look to it, that he may communicate to the poor heartily; and let him do the same to the sick, and to distressed families, and to strangers. The recompence God will give, who is so far from forgetting such works, that he will reward them a hundred fold. Grieve no man who is already grieved, for it is sinful. Rejoice not over any man's misfortune, for before a day be past you may come to some sad accident. Take heed you do not speak ill of God; and take no false oath.

Yesterday I was at the last sermon which I am like to hear in this world; the preacher was

* This is part of a Spiritual Hymn used in the Lutheran Church.

an Englishman, and a doctor of divinity, his name Burnet; and I can take God to witness, that in this sermon my sinful heart was opened, and received great comfort from it. The text was as follows; "Christ Jesus came not to call the righteous, but sinners to repentance." O joy above all joy! O comfortable promise! O sweet recreation of my soul! Nay, nothing can be found, that tends more to a poor sinner's comfort, than this comfortable promise. If therefore Christ Jesus came into the world to save sinners; without doubt he is come for my sake too. Therefore, O my sins, why do ye trouble me? Jesus Christ is here, who will take you away from me Sing and rejoice, O my soul, with Jacob, Gen. xxxii. 10. "I am less than the least of thy mercies, and the truth thou hast shewn unto thy servant." With David we will say, 2 Sam. vii. 19. "What am I, Lord, and what is my father's house, that thou hast brought me thus far?" With the Virgin Mary, we will say, Luke i. 47. "My soul magnifies the Lord, and my spirit hath rejoiced in the God of my salvation; for he hath done great things for me, and holy is his name."

And here ye great commanders, give me leave to present you with this humble supplication, that you would not take it ill, because this writing comes to you in a homely stile, yet it is penned with a good intent, and that is enough. Because I am neither divine, nor philosopher, but have by profession been a soldier, I have written things in very coarse language; yet I hope no pious man will think ill of it. I have written nothing but what I have seen with mine own eyes; I grant, you are not all such persons, as my writing seems to make out, yet must confess, that I have known abundance of such, but will not call them by their names. I am sorry I have seen so much, and have not eschewed that evil, which hath at last brought me to shame before the world.

XXIV. I shall in the last place, briefly acquaint you with my course of life. About 27 years ago, my father of blessed memory, sent me out of Swedeland to Germanland, where for two years together I went to school. Two years after that came the Muscovites, which obliged us to fly back to Swedeland. About 23 years ago, I left Sweden, and went towards Pomerania, where I served the elector of Brandenburg a quarter of a year; from thence I went through Poland towards the German emperor's dominions. From Bohemia I travelled into the Netherlands, from thence into France; from France again into the Netherlands with the army: After the peace, I went back to Bohemia, Austria, and Hungary, and after that again to the Netherlands, where I stayed 8 years, from thence I went farther, to Holland, Denmark, Sweden, Poland, and then to Holstein, which was in the year 81. During these 23 years, I have been a Papist 1[?] years, because I was commonly all that time in Popish territories; but in Holstein in the year 81, I turned again to the Lutheran religion, in which I was born, and baptized, and in that, God willing, I mean to die. I could no longer bear with the Popish religion, because of their many saints and intercessors. There is no religion, comes nearer to mine, than that of the Protestants in England; God grant they may live in peace with the Calvinists to prevent quarrels, and in opposition to the Papists.

Ah! my dear Jesus, look upon me with the eyes of thy mercy, and chasten me not according to my desert. I firmly hope, thou wilt not dismiss my broken contrite heart without a blessing, the rather, because thou didst bespeak the poor thief upon the cross, with these comfortable words; This day thou shalt be with me in Paradise. O Jesu! let me also hear this word, and my soul will be safe. I will not cease praying to the very last, and to say, Lord Jesu, into thy hands I commend my spirit. These shall be my last words, and when I can speak no more, O Lord Jesu, thou wilt accept of my sighs, for I believe that thou camest into the world to save sinners, of whom I am chief. Now, Lord Jesu, strengthen me in all my sufferings. Thou sayest, Come to me all ye who are weary and heavy laden, and I will refresh you. In this faith, at thy command, I am come, but altogether unworthy, O Lord Jesu, heal thou me, for thou art the true physician of souls. Yea, Lord Jesu, I confess, that at present I feel great refreshment in my sinful heart. I am as an armed man, who goes against his enemy, and will not draw back one step, but fight courageously. Now, my Lord Jesu, thou hast armed me with a stedfast faith, and confidence in thee. Grant me, Lord Jesu, that I may be thankful for this great mercy and goodness; let me wrestle boldly, and press through life and death, Hallelujah.

Let me say, Lord Jesu, with St. Paul, If God be for us, who can be against us. Nay, he hath not spared his own Son, but hath given him for our sins. Who will accuse the elect of God? It is God that justifies, who will condemn? It is Christ that died, who sits at the right hand of God and intercedes for us. Who shall separate us from the love of God? shall trouble, shall anguish, shall persecution, shall hunger, shall nakedness, shall peril, or the sword? As it is written by David, Psal. 18, 28. "The Lord make my darkness light; and the blood of Jesus Christ wash me and purify me from all my sins." Amen, Jesu. Amen, Amen.

Whatever state or dignity a true Christian is of, he must not make light of prayer, or think, I can pray to morrow, and this business I must do to day. Ah! Christian, let thy business be rather laid aside, except thy fellow-christian should be in the pangs of death, or thy house should be on fire, for these things may cause more than ordinary trouble. Neglect not the service of God, O my son, nor the festivals of the church, for I can tell, what

will be the effect of that neglect. In a word nothing should have so much of your care, as the exercise of prayer, and going to the house of God, where you must not sit idle, but work in the vineyard, that you may receive your penny, which the lord of the vineyard will at last give. Consider this, for Christ his sake. Amen, Amen. My sweet Jesus. Amen.

XXV. And now I will let you know how I came to that late misfortune here in London. About the end of October last I came to London, and lodged in the city, near the Royal Exchange in Broad-street, in the Dutch ordinary, at the sign of the City of Amsterdam. When I had been there a month, a gentleman came to lodge there, who called himself Vallicks, but his name is Vratz: He and I began to be acquainted: at last he told me he had a request to me; to whom I replied, That to the utmost of my power he might command me. To this he said he had a quarrel with a gentleman, and desired me to be his second. I told him without any consideration, I would. A fortnight after he told me, That it was good living thereabouts; and if I would take a lodging in that place, during the four weeks, he should stay in London, he would pay for me. Hereupon he took four servants, sometimes he was for marrying, sometimes for fighting; and if he could get one, who would kill the gentleman, he said, he would give him 200, nay 300 dollars. There it rested for a while. He dismissed two of his servants, and was going for France, or Holland. The two servants continued without places. Six days after, I took leave of my acquaintance; and after my things had been two days on shipboard, I went to the Lutheran church, where I received a letter from capt. Vratz. O unhappy letter! The contents were as follows:

'Sir; I am sorry I could not have the honour to take my leave of you; but be it all to your advantage. I am going for France, yet have not as yet a certain commission. In the mean while be pleased to continue, either at Mr. Blocks, or in the city of Amsterdam, where I will not fail to pay for all. I am, your obliged servant, DE VRATZ, alias DE VALLICHS.'

After I had read this unhappy letter, I changed my resolution, and stayed here and fetched my things from the ship, and went to lodge in Blackmore-street. About 10 weeks after he returns to London, sends for me, and I came; and himself took a lodging in Westminster, where I was with him; and the count himself lay one night in the captain's and my lodging. The captain then asked me, how Thynn did? I told him, I could not tell, for I had never seen him. Thereupon he told me, I must see now, how to order it, that I may come at him, if I could get but some stout fellows——Do you know no Frenchmen about town, or what other people there is? I said, I would see. Then he added; Could not one get an Italian, who might dispatch him, I would give him 3 or 400 dollars? I said, I knew none: Hereupon he got four brace of pistols, three little ones, and one brace of great ones. The great ones, and one brace of little ones, he had by him before, and two long swords; and then said, Now he is a dead man. He prayed me to cause two ponards to be made, whereof he gave me the draught, but I would not do it. And now he had a mind to draw in a great many more. At last I had a very strange ominous dream. He saw I was musing, and then asked me, what I ailed? I told him; and he laughed, saying, There was no heed to be given to dreams; yet the dream proved too true. Now, I saw, he was resolved to kill him; when therefore he importuned me to engage more men in the business; I told him, What can you do with so many people, cannot you take three horses, you will have use for no more? Hereupon he fetched out money, and on the Friday before the murder was done, he bought three horses. On Sunday following he told me, I shall get a brave fellow, (that was the miserable Polonian) who came to town on Friday, and the Sunday after he killed the gentleman, (according to order from his master, and you know who his master was) myself being, then alas! in the company. Half an hour past four, the gentleman went by in his chariot before our window. Thereupon we went for the horses, and afterwards rid toward the Pallmall, where we met the gentleman in his chariot, I rid before the coach, the captain went close by it, and then cried, Hold, and shewed the Polonian the man in the coach; who thereupon gave fire, and shot four or five bullets into his body. They say, he lived till next morning, and then died. On Monday following we were all taken prisoners, and must now die too; we have yet four days to live: The great God pardon us this sin, for Christ his sake. Amen. For I repent from the bottom of my heart, that in my old age, to which I was advanced with honour, I should come to this disaster: but it's done, and cannot be remedied. It is written, The days of our years are few, and when we come to our best age, it is then but labour and sorrow.

Memorandum,] The letter, the captain shewed me one day, was to this purpose: I have given Captain Vratz full commission to dispose of the places of captain or lieutenant, to whomsoever he shall find capable of it. So far I read the letter, five lines lower stood these words, 600 Dollars, which was not the captain's hand, or writing, it was high Dutch. I seeing the letter threw it down upon the table, but he put it up, and underneath, the letter was signed, Coningsmark. Thus much I saw, but made no farther reflections upon the letter, because, God knows, I was blinded.

Another Memorandum, I have forgot in the papers, which after my death are like to be published, viz. It hath been twice in my thoughts, when capt. Vratz was in Holland, to go and tell Mr. Thynn, what the captain intended against him, but I still forgot.

I desire the doctor, in case any thing of the captain's writings should come abroad, to compare what he saith with my confessions, and to consider one with the other. Give unto Cæsar the things that are Cæsar's, and unto God the things that are God's. I hope I shall go with the publican into the temple of God: I am a great sinner, yet God's mercy is greater, wherein I trust; nor will Christ therefore refuse a soul, though the body is hanged up by the world. My lords, ye judges, I do wish you all happiness, I confess you have a weighty office, God give you his grace, that you may neither add to, nor diminish from a cause. You have seen how I exposed all my failings, and that openly, to God, and to the whole world, because others may take warning by me, whom I leave behind me in the world. I beg of God, that people may consider this my poor writing, the effect of the assistance of God's spirit, and the desire of a pious soul.

The captain desired me, that I would cause two daggers to be made, because at first it was resolved, we should fall upon Mr. Thynn on foot; and he would have had some Italian or another, to thrust them into Mr. Thynn's body; yet I neither looked out for a man fit for that purpose, nor would I cause those daggers to be made. The musquetoon, or the gun, I fetched indeed; but it was out of a house, which the captain described to me. The holy passion of Jesus Christ preserve me; the innocent blood of our Lord strengthen me; the pure blood that flowed from his side, wash me; the great pain of Jesus Christ heal me, and take away the deadly wounds of my soul.

O bountiful Jesus, hear me; hide me in thy holy wounds: From thy compassionate heart, let there flow into my wicked heart, mercy, comfort, strength, and pardon of all my sins.

My Lord, and my God, if I have but thy most holy passion and death in my soul, neither heaven nor earth can hurt me. O Jesus! I creep into thy gaping wounds, there I shall be secure until the wrath of God be over past. O Lord, let me always adhere to thee; keep off from me all the assaults of Satan in the hour of my death. O my dearest Lord Jesus, who hast spoke comfortably to the penitent sinner on the cross, call to my dying heart, and speak comfort and consolation to it; assist me, that in my last necessity, through thy help, I may happily overcome; and when I can speak no more, accept of my sighs in mercy, and let me continue an heir of eternal happiness, for the sake of thy most holy blood, which thou hast shed for me. Amen. Lord Jesu Christ, my lord and Saviour. Amen. Amen.

O Jesu, receive my poor soul into thy hands, then shall I die thy servant. My soul I commend to thee, and then I shall feel no pain nor sorrow. Amen. Amen. Amen.

These ejaculations are parts of such spiritual songs, as are usually sung in the Lutheran Churches.

1. My wants and my necessities
   Sweet Jesus, I entrust with thee.
   Let thy good will protect me Lord,
   And what's most wholesome, grant thou me.
2. Christ is my life, death is my gain,
   If God be for me, I am safe.
3. My Lord, my God, O pity me,
   With free, with undeserved Grace!
   O! think not on my grievous sins,
   And how I have defiled my soul.
   When in my youthful days I err'd,
   Against thee Lord, thee have I sinn'd;
   Sinn'd then, and do sin every day:
   Thee I intreat through Christ I mean,
   Who was incarnate for my sins.
4. Consider not Lord Jesus Christ,
   How heinous my transgressions are;
   Let not thy precious name, O Lord,
   Be lost on this unworthy wretch.
   Thou'rt called a Saviour, so thou art
   With mercy Lord, look on my soul.
   And make thy mercy sweet to me;
   Sweet, Lord to all eternity.
5. Almighty Jesus, son of God,
   Who hast appeased thy father's wrath:
   I hide myself within thy wounds;
   Thou, thou, my only comfort art,
   Amen, thou art, so let it be:
   Give to my faith, give greater strength;
   And take from me all doubts away;
   What I have pray'd for, give me Lord.
   In thy great name my soul hath pray'd;
   And now her joyful Amen sings.
   Ask, and ye shall have.

THE CONFESSION
OF
GEORGE BORODZYCZ,

The Poloman, signed with his own Hand in Prison, before his Execution.

I George Borodzycz, do here, in few words, intend to make known to the world, how I came into the service of count Coningsmark. About eighteen months ago, I was recommended, by letters to the quarter-master general Kemp at Staden; and from thence I was to be sent to the count at Tangier; but by reason of the hard winter, I was stopt, for the ship in which I was to go, stuck in the ice in the river Elbe; this made me stay till further order. In March last, I received a letter, which ordered me to go and stay in a manor belonging to the count in the bishoprick of Bremen, and there expect new orders from the count. At last I received a letter, with orders, to come by land for Holland; but destitute of an opportunity, I staid till the 12th of November, 1681. And then new orders came, that I should come for England to the count's brother, where I should fetch horses, and convey them to Strasburgh. And accordingly I left Hamburgh the 24th of December, 1681, and was at sea till the 4th of February, 1682. When I came to London, I lay the first night in the city, hard by the Royal Exchange, at one Blocks; and from thence I was conducted to the count's brother, and from thence to the count himself, who was to be my master: When I came to him, capt.

Vratz being with him, my lord told me, I should be with capt. Vratz three days, till his, *i. e.* the count's baggage and goods he had on shipboard, came. Whereupon the captain said he would send his man for me next day, which was Sunday, which he did accordingly. I went with his man, and my lord charged me, I should do what capt. Vratz should order me to do. I went thereupon to my chamber, and said the Lord's Prayer. On Sunday, about one of the clock, came up the captain's man for me, and brought me to the captain. When I saw him, he told me; "It is well you are come, for I have a quarrel with an English gentleman; I did formerly send him two challenges, but he answered them not; whereupon count Coningsmark and myself went for France; but that gentleman sent six fellows after us who were to kill the count and me. Accordingly they came on us, the count received two wounds, we killed two of them, and I am now come hither to attack that gentleman in the open streets as a murderer; and as he hath begun, so I will make an end of it." Whereupon he gave me the gun, which I should make use of to kill him. When hereupon I pleaded with capt. Vratz, and shewed myself unwilling, saying, that if we were taken, we should come to a very ill end. He answered, I need not trouble myself about that, if we should be taken prisoners, it was he that must suffer for it, not I; and for my service, he would recommend me to count Coningsmark; whereupon I thought with myself, that it might be here as it is in Poland, viz. Where a servant doth a thing by his master's order, the master is to suffer for it, and not the servant.

We went therefore soon after for our horses, and rid toward the Pallmall. The captain told me, I will stop the coach, and do you fire upon the gentleman; which was done accordingly. Lord have mercy upon me.

I am heartily sorry, that my honest parents must receive this unwelcome news of me; the Almighty God take care of my soul. I have great confidence in Almighty God, and know that he hath offered his Son upon the cross, for the sins of all mankind. Therefore I believe, that satisfaction was also made for my sins; and in this faith, in the name of God, I will die. Lord Jesu give me a happy end, for thy bitter death and passion sake. Amen.

What pity it is, that I should be about the space of seven weeks upon the sea, betwixt Hamburgh and London, and in great danger day and night, and yet should fall at last into this unexpected misfortune! I can bear witness, with a good conscience, that I knew nothing of the business aforehand: The great God pardon those men that have brought me to this fall; God keep every mother's child from all such disasters, for Christ His sake. Amen.

And I desire the doctor to pray for me, and to let all the world know my innocence after I am dead, that men may see and fear.

GEORGE BOROSKY.

POSTSCRIPT.

The lieutenant did often desire that their examinations before the justices of peace might be published with their other papers; for then by the questions put to them, all particulars were brought to their remembrance, which in the condition in which they were, they could not otherwise recollect so orderly; and both he and the Polander did always refer themselves to those examinations, and to the last averred the truth of them in every particular; therefore it was thought necessary to publish them together with their other confessions.

THE EXAMINATION OF LIEUTENANT JOHN STERN,

Taken before Sir John Reresby, baronet, and William Bridgman, esq.; two of his Majesty's Justices of the Peace of the county of Middlesex, Feb. 17, 1682.

This examinate saith that seven months ago he came into England, and lodged at the Amsterdam Ordinary. That about five weeks after captain Vratz came and lodged in the next room to him, and in a few days made an acquaintance with him, and said to him, It is dear living here, but as long as I stay it shall cost you nothing. This place is dear, I will go and lodge at another place. Accordingly they went to an house in St. Nicolas lane, where the captain paid for him. That the captain told him, he had a quarrel with a gentleman with whom he would fight, and that he wanted a good servant or two. That about 14 days after the captain went out one morning, saying he would return in the afternoon, but that he sent for his boots, and came not again; that a certain taylor, who wrought for the captain, came and discharged the lodgings. That the Sunday following he received a letter from the captain, excusing his going away, and saying he would return in eight days, but he came not in nine or ten weeks, that in the said letter the captain directed him to go and lodge at the Amsterdam Ordinary, or one Back's, saying he would defray his charges. That the captain came to town again a day or two after the Morocco ambassador had been to see the guards in Hyde Park. That the examinate then meeting the abovementioned taylor (who is now prisoner) with the captain's sword, which he knew, the taylor told him the captain desired he would come and see him; that he accordingly went, but nothing past between them then of any moment. That the next day the captain came to him, and began to discourse again about his quarrel, repeating that he wanted a good servant or two, for he would fight. That about 9 or 10 days ago the captain told him he should have a good servant suddenly; and that if he this examinate would assist him the captain, he would make his fortune. That the captain gave him money to buy a musquetoon, which he did accordingly. That this day sevennight the captain bought

three horses, and the day after said to this examinate, I must have the rogue now. Next day being Sunday about noon, when the Polander came the captain said to this examinate, Now I have got a brave fellow; and so the captain went to the Polander into another room, and when he came back to this examinate, he said to him, this is a brave fellow indeed, for he says those that will not fight must be killed. That after dinner the captain sent out one of his servants to know whether the gentleman with whom he had a quarrel, went out, that the servant brought word he was gone out, whereupon the captain put on his boots, and sent this examinate for two horses, to be brought to the Black Bull in Holborn; soon after which another person brought a third horse, and then the captain, the Polander, and this examinate got on horseback, and went towards Charing-cross, and having gone further in the Pallmall, this examinate being about ten yards behind the coach (which he had met and passed) heard the captain say stop or halt to the coachman, and presently heard a shot, and saw the fire, upon which he turned about, and saw the other two persons ride away whom he followed.

The examinate being gone out of the room, and desiring to be brought in again, further said, that the captain hath often told him, that he would give two, three, or four hundred crowns to find a man to kill Mr. Thynn.

His further EXAMINATION, taken the 19th of February, 1682.

He saith that he had it in his thoughts twice to go to Mr. Thynn and acquaint him that the captain was resolved to kill him. That the captain desired him to get an Italian that would stab a man, and that he this examinate would get two poniards made: and asking the captain how he would have them made? the captain took pen, ink, and paper, and made a draught of them, adding that if he could find such an Italian, he would give him three or four hundred crowns, that this was before the Polander came over. That upon the same day when the murder was committed, the captain bid him charge the musquetoon with fifteen bullets, whereupon he replied, that then they should kill the footmen, and all about the coach; the captain answered, it matters not for that. That this examinate charged two pistols more, but put only five or six bullets in the musquetoon. That some of the bullets were wrapt up in rags, with rosin powdered, which would burn. That he heard the captain say (as he thinks to the Polander) that if the duke of Monmouth were with Mr. Thynn, nothing must be done. That the captain told him, if he would assist him in this business, he would procure him the command of a company. That he sitting one day melancholy by himself, the captain came to him, and asked him what he ailed? Whereupon this examinate said, that he had dreamed that four dogs did fly at him, but that two were chained, and the other caught hold of him; upon which the captain seemed concerned, but presently plucked out a letter which was signed Coningsmark, in which was expressed that the count gave the captain full power to dispose of the captain lieutenant's place of his regiment, saying at the same time (this examinate not being willing to receive the letter at first), What do you think I would be one of the dogs to bite or deceive you? That he afterwards saw towards the end of the letter the figures of 600 (which he thinks was to express rix dollars) but what they concerned or related to, he knows not, for being he had seen the power to dispose of the company, he read no further.

JOHN RERESBY.
WILLIAM BRIDGMAN.

THE EXAMINATION

OF

GEORGE BOROSKY,

A Polander, the 17th of February, 1682, before Sir J. Reresby, bart., and William Bridgman, esq., two of his Majesty's Justices of the Peace for the county of Middlesex.

Who saith, That he came into England by the desire of count Coningsmark, (expressed to him by his merchant at Hamburgh) but knew not for what cause; but after he came, count Coningsmark told him on Saturday the 11th instant, that he had a quarrel with an English gentleman that had set six persons upon him upon the road, in which conflict he was wounded, and two of the assailants were killed. Therefore since the said Mr. Thynn did attempt for to kill him, he would make an end of it. He further said, to morrow will come a certain servant to conduct you to the captain, and what he bids you to do, that you are to observe. That a person came on Sunday morning about 11 o'clock accordingly, and carried him to another house, where he found the person that conveyed him to the captain, who told him that he must do what he bid him to do, giving him a musquetoon, a case of pistols and a pocket pistol, he having a sword before given him by the count; and the captain further added, repeating it five or six times, when we go out together, if I stop a coach, do you fire into it, and then follow me. They accordingly took horse, and when they met the coach, the captain having a pistol in his hand, cried to the coach, hold, and at the same time bid this examinate fire, which he did accordingly. That he being further examined as to Mr. Hanson's knowing any thing of this matter, he saith he doth not know that he doth. That as to the arms, there was a blunderbuss, two swords, two pair of pistols, three pocket pistols, two pair of boots tied up together in a kind of sea-bed, and delivered to Dr. Dubartin a German doctor, who received them at his own house.

JOHN RERESBY.
WILLIAM BRIDGMAN.

REMARKS on the Trial of Count CONINGSMARK, by Sir JOHN HAWLES, Solicitor-General in the Reign of King William the Third.

I think fit to remember in the same reign, though before this time, one case, to shew how the courts of justice were remiss or violent, according to the subject matter.

All will agree that the murder of Mr. Thynne was one of the most barbarous and impudent murders that ever was committed; and of that murder count Coningsmark, though he escaped punishment, was the most guilty.

I do not complain that in that trial the chief Justice directed the prisoner the way to make the king's counsel shew the cause of challenge against the persons called on the jury, and challenged for the king, without any reason: It was his duty so to do; and he ought to have directed Fitzharris the same method, which he did not: but he was blameable that he did not ask the Lieutenant and Polander what they had to say for themselves, which was always done before and since that time, and ought to be, which was an injustice; and therefore two of the prisoners at the time of their sentences said, they were never tried, though I believe no great injury to them, because they had little or nothing to have said for themselves.

But if they had been asked, they would have said, as they did before their trials to the justice of peace who committed them, and as they did after their condemnations, that count Coningsmark put them upon doing what they did, which might have influenced the jury to have found the count guilty, which was contrary to the design of the court; and it was for the same reason the chief justice would not permit the justice of peace to read the examination of Stern and Borosky.

I do agree, that what they said before the justice of peace was not evidence against the count; I agree that the count being indicted and tried as accessary, at the same time, the principals were indicted and tried, the principals could not be good witnesses against the count, because properly a principal ought to be convicted before the accessory be tried; and therefore, though for expedition both are tried together, yet the verdict always is, and ought to be given against the principal, before that of the accessory.

But I deny what was in that trial laid down for law, that the accessory being in the same indictment with the principal must be tried at the same time. It is true, the count desired his trial might be put off for two or three days, which the court knowing what was best for the count denied, and not for the above pretended reasons; for an indictment against many may be joint, and yet the trials may be several; the truth is, in such cases the indictment is joint and several.

Suppose the accessory, at the trials of the principals, had not been in custody; will any person say, that if afterwards he was taken, he can't be tried upon that indictment in which he was joined with the principals?

But besides a hundred precedents not printed there is the case of George Salisbury et al' in Plowden, fol. 100. where it was resolved that though an indictment against many is joint, yet the Venire may be several against each person and consequently the trials may be several; and, if so, then the times of the trials may be several; but that which is to be complained of is, that the count, in the opinion of all mankind, at that time and since, was the most guilty man; yet the care taken to punish the less guilty, as Stern and Borosky, was in order to let the most guilty escape; for I think both Stern and Borosky might, and would have been good witnesses against the count, if the court would have permitted it. The count might have been indicted as accessory to Vratz only; for the accessory to all the principals is accessory to every of them severally: and when the court in their private consciences were satisfied the count was most guilty, they ought to have been cunning, *astuti*, as my lord Hobart calls it, to have brought him to punishment. But it was said, Stern and Borosky being indicted of the same crime with the count they could not be good witnesses against him, which I think is no more law than truth: Truth it was not, for the count was indicted as accessory, the rest as *principals*. But taking it that all were indicted and tried as principals for the same fact at the same time, why is not the evidence of the one good against the other? First, I think there is no express resolution for that point of law, but a late rule given at Kingston assizes upon the trial of a maid and one Saterwaite for burning of an house; and therefore there is a liberty to examine by reason how the law is. I agree if a man is indicted and tried for killing another, he shall not be admitted to say, B. did it by himself; but I think he may be a good witness to prove that he and B. did it; that is to say, he shall not give any evidence against another, which tends to acquit himself as well as accuse another; and I think he may give evidence which accuses another of the same crime whereof he is indicted, if it doth not tend to acquit himself.

For it is agreed on all hands, that being guilty of the same crime, doth not disable a witness; for then Rumsey and several persons in the lord Russel's plot, as it was called, had not been good witnesses. In the next place, the circumstance of an indictment against the witnesses for the same thing he testifies against another, do not disable him; Widdrington was in-

dicted for the same things, of which he gave evidence against several others as his complices in robberies. Nay, the law hath given somewhat more credit to the evidence of a person indicted as a witness of the same things against others, than it does to a person not indicted; as in the case of an approver, which, as Stamford (S. P. C. Lib. 2. c. 53.) says, was a person in prison (not at large) for the fact for which he was indicted, arraigned upon an indictment, or an appeal of felony, who before a coroner assigned by the court, confesses himself guilty of the felony of which he is indicted, and not of any other, and confesses other persons, naming them as coadjutors with him in committing the crime of which he is indicted, and not of any other crime; so much credit shall be given to that confession, that process shall be made out against the person impeached, who, if taken, shall be arraigned on that approvement, as if an indictment by a grand jury had been found against him: and if the law gives so much credit to an approver, I think no person can shew me a reason why a person indicted is not a good witness against another for the same crime.

It is true, Stamford (S. P. C. Lib. 2. c. 58.) says, if the king gives an approver a pardon, he is a good witness; which implies, that otherwise he is not: But it must be considered, that the reason of that is, that an approver being indicted, as he always is, and confessing the indictment, is convicted; and a person convicted of felony cannot be a witness till pardoned. But it will be no argument why Stern and Borosky had not been good witnesses against the count before they were convicted; and it was a like piece of justice, that whereas the count was the most guilty, he was acquitted.

Vratz being the next greatest offender, was honourably interred, and Stern and the Polander, who were the least offenders in that matter, were hanged in chains.

It was somewhat like the new England law, remembered by Hudibras, (Part 2. Canto 2.) of hanging an useless innocent weaver for an useful guilty cobler.

290. The Trial of FORD Lord GREY of Werk, ROBERT CHARNOCK, ANNE CHARNOCK, DAVID JONES, FRANCES JONES, and REBECCA JONES, at the King's-Bench, for a Misdemeanor, in debauching the Lady Henrietta Berkeley, Daughter of the Earl of Berkeley: 34 CHARLES II. A. D. 1682.*

THERE having been an Information preferred against the right honourable Ford lord Grey of Werk, and others, by his majesty's attorney-general sir Robert Sawyer, the first day of this Michaelmas-Term; and the lord Grey having then pleaded to it Not Guilty, and the other defendants, the like afterward, and the king's attorney joined issue upon it; Tuesday the 21st of November 1682, was appointed for trial of this cause; but it was then adjourned to this day, because one of the witnesses for the king was not ready; but this day it came on about nine in the morning at the King's-Bench-bar, and held till two in the afternoon, all the judges of the said Court being present: viz. Sir Francis Pemberton, C. J. sir Thomas Jones, sir William Dolben, and sir Thomas Raymond.

First, Proclamation was made for silence, and then for information, if any person could give any, concerning the misdemeanor and offence whereof the defendants stood impeached: then the defendants being called, and appearing, were bid to look to their challenges, and the jury being all gentlemen of the county of Surrey, were called, challenged and sworn in this order.

Cl. of Cr. 1. Sir Marmaduke Gresham; 2 Sir Edward Bromfield; 3. Sir Robert Knightley; Sir John Thompson.

Serj. *Jefferies.* We challenge him for the king.

Mr. *Holt.* Then we challenge *toutz per availe*, unless the king shew his cause of challenge; for by the statute of 24 Ed. 1, the king cannot challenge without cause.

Serj. *Jeff.* But by the course of practice, all the pannel must be called over before the king shew his cause.

Mr. *Attorney General.* (Sir Robert Sawyer) Before the party can have his challenges allowed, he must shew his cause; but they must go on with the pannel in the king's case, to see if the jury be full without the persons challenged, and that is sufficient.

L. C. J. (Sir Francis Pemberton.) If they challenge any person for the king, they must shew cause in due time. For I take the course to be, that the king cannot challenge without cause, but he is not bound to shew his cause presently; it is otherwise in the case of another person.

Serj. *Jeff.* That hath always been the regular course.

Mr. *Holt.* Our challenging *toutz per availe*, doth set all the rest aside till cause be shewn.

L. C. J. The statute is, the king shall shew

* See Emlyn's Preface, vol. 1, p. xxxiv, of this Collection. 4 Blackstone's Commentaries 65, and Mr. Christian's Note. 4 Hawk. Pleas of the Crown, p. 409, 410, 7th edition, by Leach, and the books there cited. East's Pl. Cr. chap. 11, sect. 10, chap. 9, sect. 3.

cause: but when it comes in a case between the king and another party, that they both challenge, the other party shall shew cause first.

Mr. *Holt.* My lord, we challenge *touts per availe.*

L. C. J. You must shew a reason for it then.

Att. Gen. The king shall not be drawn to shew his cause, if there be enough in the pannel besides.

Mr. *Williams.* That is to say then, that the king may choose whom he pleaseth against the statute.

Serj. *Jeff.* No, Sir, we desire none but honest and indifferent gentlemen to try this cause.

L. C. J. The old challenge is taken away, by that statute, from the king, 'quia non sunt 'boni pro Domino Rege,' and therefore if the king challenge any, he must shew cause, but it must be in his time, and not before you shew your's. Let him stand by a-while.

Cl. of Cr. John Sandys, esq.

Serj. *Jeff.* We challenge him for the king.

Mr. *Holt.* For what cause, Sir?

Serj. *Jeff.* We will tell you in good time.

Cl. of Cr. 4. Sigismund Stiddulph; John Weston.

Mr. *Weston.* My lord, I am no freeholder.

Mr. *Holt.* He challenges himself.

L. C. J. Well, he must be set aside.

Cl. of. Cr. 5. Thomas Vincent; 6. Philip Rawleigh; 7. Robert Gavel; 8. Edward Bray; 9. Thomas Newton; 10. John Halsey; 11. Thomas Burroughs, and 12. John Pettyward.

Cl. of Cr. Gentlemen, you of the jury that are sworn, hearken to your charge.

Surrey ss. Sir Robert Sawyer, kt. his majesty's attorney general, has exhibited an Information* in this Court, against the right honourable Ford lord Grey of Werk; Robert Charnock, late of the parish of St. Botolph, Aldgate, London, gent. Anne Charnock, wife of the said Robert Charnock; David Jones, of the parish of St. Martin-in-the-Fields, in the county of Middlesex, milliner; Frances Jones, wife of the said David; and Rebecca Jones, of the same, widow; for that they (with divers other evil-disposed persons, to the said attorney general yet unknown) the 20th day of August, in the 34th year of the reign of our sovereign lord the king that now is, and divers other days and times, as well before as after, at the parish of Epsom in the county of Surrey, falsely, unlawfully, unjustly, and wickedly, by unlawful and impure ways and means, conspiring, contriving, practising, and intending the final ruin and destruction of the lady Henrietta Berkeley, then a virgin unmarried, within the age of 18 years, and one of the daughters of the right honourable George earl of Berkeley (the said lady Henrietta Berkeley, then and there being under the custody, government and education of the aforesaid right honourable George earl of Berkeley her father) they the said Ford lord Grey, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, and divers other persons unknown, then and there falsely, unlawfully, and devilishly, to fulfil, perfect, and bring to effect, their most wicked, impious, and devilish intentions aforesaid; the said lady Henrietta Berkeley, to desert the aforesaid

* The Latin Indictment runs thus:

REX *versus* Dom' GRAY.

Mich. 34 Car. Secundi. Rot. 1.

ss. Quod Ford Dom' Gray de Wark R. C. nuper de, &c. Gen' A. C. Ux' pred' R. C. D. J. F. J. ux' pred' D. J. et R. I. cum divers' al' male dispōit' p'son' eidem Attorn' dicti Dom' Regis nunc general' adhuc incognit' 20 die Augusti Anno Regni Dom' Caroli secundi nunc Regis Angl', &c. 34 et divers' al' dieb' et vicibus tam antea quam postea apud Paroch' de Epsom in Com' Surr' falso illicite injuste et nequissime per illicitas et impuras vias et medias conspiran' machinan' practican' et intenden' final' ruinam et destruction' Domine Henriet' Berkley tunc Virgin' innupt' infra etatem 18 Annor' et un' filia prenobilis G. Comit' Berkley (eadem Dom' H. B. tunc et ibidem sub custod' Regimine et educat', prefat' prenobil' G. C. B. patris sui existen') pred' Ford Dom' Gray R. C. &c. et divers' al' person' ignot' adtunc et ib'm falso illicite injuste et diabolice ad nequissimas nefandissimas et diabolicas intention' suas pred' perimplend' perficiend' et ad effectum redigend' pred' Dom' H. B. ad deferend' prefat' prenobilem G. C. B. patrem pred' Dom' H. et ad Scortac' fornicat' et adulterium committend' et in scortat' fornicat' et adulter' cum prefat' F. D. G. (eodem F. D. G. adtunc et diu antea et adhuc marito existen' Dom' Marie al' fil' pred' prenobil' G. C. B. et soror' pred' Domine H.) contra omnes leges tam divin' quam human' impie nequit' impure et scandalose vivere et cohabitare tentaver' incitaver' et sollicitaver' et quilibet eorum tunc et ibidem tentavit incitavit et sollicitavit. Et quod pred' F. D. G. R. C. &c. ac al' person' ignot' vi et armis, &c. illicite injuste sine licentia et contra voluntat' prefat' prenobil' G. C. B. in prosecution' nefandissimar' conspirac' suar' pred' prefat' Dom' H. B. ibidem circa horam 12 in nocte pred' 20 diei August' Anno suprad' apud pred' Paroch' de E. in Com' S. pred' e domo mansional' pred' prenobil' G. C. B. ibidem scituat' et existen' et e custod' et Regimine ejusdem G. C. B. ceper' asportaver' et abduxer' Et pred' Dom' H. B. a pred' 20 die Augusti Anno suprad' et continue postea usque diem exhibition' hujus information apud Paroch' de E. pred' in Com' pred' et in divers' locis secret' ibidem cum prefat' F. D. G. illicite nequit' et scandalose vivere cohabitare et emanere procuraver' et causaver' et quilibet eorum procuravit et causavit in Magn' Dei Omnipotent' displicent' Ad ruinam et destruction' prefat' D. H. B. et amicor' suorum tristitiam et disconsolat' in malum et perniciosum exemplu', &c. Unde, &c.

right honourable George earl of Berkeley, father of the aforesaid lady Henrietta; and to commit whoredom, fornication, and adultery, and in whoredom, fornication, and adultery, to live with the aforesaid Ford lord Grey (the said Ford lord Grey, then and long before, and yet, being the husband of the lady Mary, another daughter of the said right honourable George earl of Berkeley, and sister of the said lady Henrietta) against all laws, as well divine as human, impiously, wickedly, impurely, and scandalously, to live and cohabit, did tempt, invite, and solicit, and every of them, then and there, did tempt, invite, and solicit. And that the aforesaid Ford lord Grey, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones and other persons unknown, with force and arms, &c. unlawfully, unjustly, and without the leave, and against the will of the aforesaid right honourable George earl of Berkeley, in prosecution of their most wicked conspiracies aforesaid; the said lady Henrietta Berkeley, then and there, about the hour of twelve in the night-time, of the said 20th day of August, in the year aforesaid, at the aforesaid parish of Epsom in the county of Surrey aforesaid, out of the dwelling-house of the said right honourable George earl of Berkeley there situate and being, and out of the custody and government of the said earl of Berkeley, did take, carry, and lead away. And the said lady Henrietta Berkeley, &c.

Mr. Smith. May it please your lordship, and, gentlemen, you of the Jury; Mr. Attorney General hath exhibited an Information in this court, against Ford lord Grey of Werk, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, wherein is set forth, That the defendants, the 20th of August, in the 34th year of this king, at Epsom, in your county, did conspire the ruin and utter destruction of the lady Henrietta Berkeley, daughter of the right honourable George earl of Berkeley; and for the bringing about this conspiracy, they have seduced her to desert her father's house, though she be under the age of 18 years, and under the custody and government of her father; and solicited her to commit whoredom and adultery with my lord Grey, who was before married to the lady Mary, another daughter of the earl of Berkeley, and sister to the lady Henrietta. That after they had thus inveigled her, they did upon the same 20th day of August, carry her away out of the house, without the earl's licence, and against his will, to the intent she might live an ungodly and dishonourable life with my lord Grey. And after they had thus carried her away, they obscured her in secret places, and shifted about from place to place, and continued this course of life ever since. And this the information says, is to the displeasure of Almighty God, the utter ruin of the young lady, the grief and affliction of her

information, at the parish of Epsom aforesaid, in the county of Surrey aforesaid, and in divers secret places there with the said Ford lord Grey, unlawfully, wickedly, and scandalously to live, cohabit, and remain, did procure and cause, and every of them did procure and cause, to the great displeasure of Almighty God, to the ruin and destruction of the said lady Henrietta Berkeley, to the grief and sorrow of all her friends, and to the evil and most pernicious example of all others in the like case offending; and against the peace of our said sovereign lord the king, his crown and dignity. To this information, the defendant, the lord Grey, and the other defendants, have severally pleaded Not Guilty, and for their trial have put themselves upon the country, and the king's attorney likewise, which country you are: your charge is to enquire whether the defendants, or any of them, are Guilty of the offence and misdemeanor whereof they stand impeached by this information, or not Guilty: if you find them, or any of them, Guilty, you are to say so; if you find them or any of them, not Guilty, you are to say so, and no more, and hear your evidence.

[For which evidence to come in, proclamation was made, and then Edward Smith, esq. a Bencher of the Middle-Temple, opened the information.]

fendants have pleaded Not Guilty

prove them, or any of them, Guilty of any of the matters charged in this information, you shall do well to find them Guilty.

Att. Gen. My lord, and gentlemen of the jury, the course of our evidence will be this; That this unhappy gentleman my lord Grey, has for four years together, prosecuted an amour with this young lady; and when it came to be detected (some little accident discovering somewhat of it) my lady Berkeley did find there was some business of an extraordinary nature between them, and thereupon forbid my lord Grey her house. My lord Grey he made many pretences to my lady, that he might come to the house to give them a visit before he departed, being to go into the country; and he takes that opportunity to settle this matter of conveying the young lady away in a very short time. And early on the Sunday morning, she was, by Charnock, another of the defendants, conveyed from the house of my lord Berkeley at Epsom, and brought here to London. We shall in the course of our evidence shew how she was shifted from place to place, and the several pursuits that were made in search after her. We shall discover to you, how she was hurried from one lodging to another, for fear of discovery. Nay, we shall prove, that my lord Grey has owned and confessed that he had her, that she was in his care and custody, and

that he owned the several instances of his amours. But I had rather the evidence should speak it, than I open so much as the nature of it.

Sol. Gen. My lord, we shall call our witnesses, who will very fully make out this evidence that Mr. Attorney has opened to you. That my lord Grey did a long time make love to this young lady, though he were before married to her sister. This treaty was discovered by my lady Berkeley last summer, upon an accident of surprising the young lady in writing a letter to my lord, and thereupon my lady Berkeley chargeth my lord Grey with these applications to her daughter, that did so much misbecome him. My lord Grey was then so sensible of his fault, that he seemed very full of penitence, and assured my lady, he would never do the like again, and earnestly desired her by all means to conceal it from my lord Berkeley; for if this should once come to be known to him, he and the young lady would not only be ruined, but it would occasion an irreparable breach between the two families, and of all friendship between my lord Berkeley and him. And therefore he desired my lady Berkeley (who had justly forbid him her house for this great crime) lest the world should inquire into the causes of it, and so it should come to be known, that his banishment from her house might not be so soon or sudden? But he begged of her ladyship, that he might be permitted to make one visit more, and with all the protestations in the world assured her, it was not with any purpose of dishonour, that he desired to come and see her, but that his departure might be by degrees, and so the less taken notice of. When my lady had thus charged my lord with his unworthy carriage to her family, and he had seemed thus penitent for it, she charges her daughter also, with her giving any allowance to these indecent practices of my lord's; she thereupon falls down on her knees to her mother, to ask her pardon for her great offence, and, with tears in her eyes, confessed she had done very much amiss, and did humbly hope she might obtain forgiveness for it, being young, and seduced by my lord Grey, and promised she would see him no more, nor have any thing more to do with him. My lord Grey he is permitted to come once more to the house, upon those asseverations and promises of his, that it should be with no dishonourable purposes in the world. It was, it seems, in his way to his own house at Sussex, but coming thither, he takes an occasion to continue there, and stay a little too long for a visit; whereupon my lady Berkeley began to suspect it was not a transient visit he came to make at her house, but that he had some ill design in prosecution of the same fault that he had been so long guilty of. And that suspicion of her's was but too well grounded, as appeared afterwards. Our witnesses will tell you, that my lord Grey, just before his departure, was observed to be very solicitous and earnest with his man Charnock (whom we shall prove by undeniable evidence to be the man that conveyed her away) giving him some directions with great earnestness, what to do was indeed not heard, but the event will plainly shew it. For my lord Grey himself, he went on his journey into Sussex, and lay at Guilford that night she was carried away, and the next morning she was missing. Thereupon my lady sends after my lord Grey, justly suspecting him to be guilty of this violence and outrage offered to her daughter and family, and they overtook him at Guilford, before he was got any further on his journey, and there acquaint him the lady was carried away, and that my lady suspected (as well she might) he knew whither. Then immediately he makes haste up to town, and writes my lady a letter, that truly he would take care to restore peace to the family, that by his folly had been so much disturbed: And there were some hopes of retrieving the matter, that this scandal upon so noble a family might not be made public; for certainly an offence of this nature was not fit should be so, nor indeed was ever heard of in any Christian society; I am sure I never read of any such cause in the courts of law. And it was impossible any way to have prevented the scandal, but that which my lady took, to pass over all, by desiring to have her child restored again to her, before such time as it was gone so far, as there is too great reason to suspect it now is. But after that, my lord Grey was so far from performing what he had so solemnly promised, and making the matter up, that he stood upon terms; he was master of the lady, and he would dispose of her as he thought fit: Third persons and places must be appointed where she must be disposed of; with capitulations, that he should see her as often as he thought fit; which was (if possible) a worse indignity than all that he had done before.

We shall prove to your lordship, that he did, a long time before this violence was offered, make applications to this young lady, and that must (as any man will believe) be upon no good account. We shall shew all the base transactions in carrying away the lady, after that confidence which my lady reposed in his protestations to do nothing dishonourably, so as to admit him to make a visit; which certainly was the greatest breach of the very laws of human society, against all the laws of hospitality, besides the great transgression of the laws of God and men. Yet even then, he seduced the lady away. For we shall plainly prove she was carried away by his coachman that once was, afterwards his gentleman, and how she was from time to time conveyed to and fro.

Mr. Serj. *Jeff.* This story is indeed too melancholy to be often repeated, the evidence had better tell it: only this one aggravation I would take notice of, which will be made out in the proof to you of this matter charged; and that is this, That my lord Grey, after such time as it was known she was in his power, gave one reason for his not delivering her up, (and I am

sorry to see his lordship should think it a reason) he had inquired how far the law would extend in such a case, and that he knew, and could give a precedent for it (which the witness will tell you of) that the law could not reach him; and that as long as he had run such a course for obtaining that which was his greatest pleasure, he would not now part with her, but upon such terms, that he might have access to her when he pleased. To such a height of confidence was this gentleman arrived, in this barbarous and infamous wickedness. But, as I said, it is a story too black to be aggravated by any thing but by itself; we shall therefore call our witnesses, and prove our fact.

[About this time the lady Henrietta came into the court, and was set by the table at the judges feet.]

Earl of *Berkeley.* My lord, my daughter is here in court, I desire she may be restored to me.

Serj. *Jeff.* Pray, my lord Berkeley, give us leave to go on, it will be time enough to move that anon. Swear my lady Berkeley; (which was done, but she seemed not able to speak).

Sol. Gen. I perceive my lady is much moved at the sight of her daughter. Swear my lady Arabella her daughter. (Which was done).

Serj. *Jeff.* Pray, madam, will you acquaint my lords the judges, and jury, what you know concerning the letter you discovered, and how you came by that discovery?

Lady *Arabella.* My mother coming to my lady Harriett's chamber, and seeing there a pen wet with ink, examined her where she had been writing. She, in great confusion, told her she had been writing her accompts. My mother not being satisfied with her answer, commanded me to search the room. Her maid being then in the room, I thought it not so much for her honour to do it then. I followed my mother down to prayers; after prayers were done, my mother commanded my lady Harriett to give me the keys of her closet and her cabinet. When she gave me the key, she put into my hands a letter, which was written to my lord Grey, which was to this effect: 'My sister 'Bell did not suspect our being together last 'night, for she did not hear the noise. I pray 'come again Sunday or Monday, if the last, I 'shall be very impatient.'—I suppose my lady Harriett gave my lord Grey intelligence that this was found out; for my lord Grey sent his servant to me, to acquaint me he desired to speak with me. When he came in first, she (I mean my lady Harriett) fell down upon the ground like a dead creature. My lord Grey took her up, and afterwards told me, said he, 'You see how far it is gone between us;' and he declared to me, he had no love, no consideration for any thing upon earth but for her; 'I mean dear lady Hen,' said he to me, for I say it just as he said it. And after this, he told me, he would be revenged of all the family, if they did expose her. I told him it would do us no injury, and I did not value what he did say; for my own particular, I defied him and the Devil, and would never keep counsel in this affair. And afterwards, when he told me he had no love, no consideration for any thing upon earth but her, I told my lady Harriett, 'I am very much troubled and amaz'ed, that you can sit by and hear my lord 'Grey say and declare, he has no love for any 'but you, no consideration for any one upon 'earth but you, when it so much concerns 'my sister; for my part it stabs me to the 'heart, to hear him make this declaration 'against my poor sister Grey'——[Here she stopt a while.]

Serj. *Jeff.* Pray go on, madam.

Lady *Arabella.* After this she said nothing; I told her, I suspected my woman had a hand in it, and therefore I would turn her away. This woman, when my lady Harriett ran away, being charged with it, swore she had never carried any letters between them; but after my mother's coming to London, both the porter at St. John's, and one Thomas Plomer accused her that she had sent letters to Charnock, who was my lord Grey's coachman, now his gentleman. I told her then, I did much wonder, she being my servant, should convey letters between them without my knowing: she then confessed it to me, but withal she told me, 'How could I think there was 'any ill between a brother-in-law and a sister?' And upon this she confessed to me she had sent letters to Charnock, though before she had forsworn it.

Att. Gen. Madam, have you any thing farther to testify in this cause? Have you any matters that you remember more?

Lady *Arabella.* There is more of it to the same effect; but all of it is only to this effect.

L. C. J. My lady Arabella, pray let me ask you, have you any more to say to this matter?

Lady *Arabella.* It is all to this purpose.

Serj. *Jeff.* Then if you please, madam, to turn now your face this way towards the gentlemen of the jury, who have not heard what you said, and give them the same relation that you gave to the court; and pray be pleased to lean over the seat, and expose yourself a little, and let them have the same story you told before, and pray tell the time when it was.

[Then she turned her face towards the bar.]

Lady *Arabella.* It was in July, Sir.

Serj. *Jeff.* Pray, madam, tell what happened then.

Lady *Arabella.* In July last, some time then, my mother came into my lady Harriett's chamber, and seeing a pen wet with ink, she examined her who she had been writing to. She, in great confusion told her, she had been writing her accompts, but my mother was not satisfied with that answer. The sight of my lord Grey doth put me quite out of countenance and patience.—[Here she stopped again.]

[My lord Grey was then by the clerks under the bar, and stood looking very stedfastly upon her.]

L. C. J. Pray, my lord Grey, sit down (which he did). It is not a very extraordinary thing, for a witness, in such a cause, to be dashed out of countenance.

E. of *Berkeley*. He would not, if he were not a very impudent barbarous man, look so confidently and impudently upon her.

Serj. *Jeff.* My lord, I would be very loth to deal otherwise than becomes me, with a person of your quality, but indeed this is not so handsome, and we must desire you to sit down. Pray go on, madam.

Lady *Arabella*. After this, my mother commanded me to search my lady Harriett's room; her maid being then in the room, I thought it not so much for her honour to do it then. I followed my mother down to prayers. After prayers were done, my mother commanded my lady Harriett to give me the keys of her cabinet and of her closet, and when she gave me the keys, she put a note into my hand, which was to my lord Grey; and that was to this effect: 'My sister Bell did not suspect 'our being together last night, for she did not 'hear any noise: pray come again Sunday or 'Monday, if the last I shall be very impatient.' I suppose my lady Harriett gave my lord Grey intelligence of this, for he sent a servant to tell me he desired to speak with me. Upon his first coming in, my lady Harriett fell upon the ground like a dead creature, and my lord Grey took her up, and said, 'Now you see how far 'it is gone between us: I love nothing upon 'earth but her; I mean dear lady Hen,' said he to me; 'and if you do expose her, I will 'be revenged upon you and all the family, for 'I have no consideration for any thing but 'her.' After that I told him, We defied him, he could do us no injury; and for my own particular, I defied him, and the Devil and all his works, and would not have any thing to do with such a correspondence. After this, I told my lady Harriet, I was much troubled and amazed, that she should sit by and hear my lord Grey, her brother-in-law, say he had no consideration for any thing on earth but her. 'For my part,' said I, 'Madam, it stabs me to 'the heart, to hear this said against my poor 'sister Grey.' I told her, I suspected my woman had an hand in this affair, and therefore I would put her away. Afterwards, the same day my lady Harriett ran away, this woman came to me; and I then told her, 'You 'have ruined her,' and asked her, 'Why 'would you send letters between my lord Grey 'and my lady Harriett?' She denied it, and swore she never did it, but when we came to London, the porter of St. John's came and accused her of conveying letters to Charnock, my lord Grey's gentleman, formerly his coachman. I then asked her again about it; she then acknowledged to me she had done it. 'But, madam,' said she, 'how could I think 'there could be any prejudice or ill between a 'brother-in-law and a sister-in-law?' Said I, 'Were not you my servant? Why did you not 'tell me? Besides, you know we have all 'reason to hate Charnock for a great many 'things.' This is all I have to say that is material, all else is to the same effect.

Serj. *Jeff.* Now this matter being thus discovered to the countess of Berkeley, this unfortunate young lady's mother; she sent for my lord Grey, and we shall tell you what happened to be discoursed between them two, and between the lady and her mother, and what promises of amendment he made. My lady Berkeley, pray will you tell what you know.—[She seemed unable to do it.] She is very much discomposed, the sight of her daughter doth put her out of order.

Lady *Arabella*. I have something more to say, that is, I told my lady Harriett, after my lord Grey had made his declaration of his love to my sister, to me, that if ever he had the impudence to name her name to me, I would immediately go to my father, and tell him all.

[Then the Countess leaned forward, with her hood much over her face.]

Att. Gen. Pray, my lady Berkeley, compose yourself, and speak as loud as you can.

Lady *Berkeley*. When I first discovered this unhappy business, how my son-in law, my lord Grey, was in love with his sister, I sent to speak with him, and I told him he had done barbarously and basely, and falsely with me, in having an intrigue with his sister-in-law. That I looked upon him, next my own son, as one that was engaged to stand up for the honour of my family, and instead of that, he had endeavoured the ruin of my daughter, and had done worse than if he had murdered her, to hold an intrigue with her of criminal love. He said, he did confess he had been false, and base, and unworthy to me, but he desired me to consider (and then he shed a great many tears) what it was that made him guilty, and that made him do it. I bid him speak. He said he was ashamed to tell me, but I might easily guess. I then said, what? Are you indeed in love with your sister-in-law? He fell a weeping and said, he was unfortunate; But if I made this business public, and let it to take air (he did not say this to threaten me, he would not have me to mistake him) but if I told my lord her father, and his wife of it, it might make him desperate, and it might put such thoughts into his wife's head, that might be an occasion of parting them; and that he being desperate, he did not know what he might do, he might neither consider family, nor relation. I told him this would make him very black in story, though it were her ruin. He said that was true, but he could not help it; he was miserable, and if I knew how miserable, I would pity him: He had the confidence to tell me that. And then he desired, though he said I had no reason to hear him, or take any counsel he gave me (and all this with a great many tears) as if he were my son Dursley, that I would keep his secret. 'For my lord, if he heard it, would be in a 'great passion, and possibly, he might not be 'able to contain himself, but let it break out

'into the world. He may call me rogue and 'rascal perhaps in his passion, said he, and I 'should be sorry for it, but that would be all I 'could do, and what the evil consequence might 'be, he knew not, and therefore it were best to 'conceal it.' And after many words to pacify me, though nothing indeed could be sufficient for the injury he had done me; he gave it me as his advice, that I would let my daughter Harriett go abroad into public places with myself, and promised, if I did, he would always avoid them. For a young lady to sit always at home, he said it would not easily get her out of such a thing as this. And upon this he said again, he was to go out of town with the D. of M. in a few days, and being he had been frequently in the family before, it would be looked upon as a very strange thing, that he went away, and did not appear there to take his leave. He promised me, that if for the world's sake, and for his wife's sake (that no one might take notice of it) I would let him come there, and sup before he went into the country, he would not offer any thing, by way of letter or otherwise, that might give me any offence. Upon which I did let him come, and he came in at nine o'clock at night, and said, I might very well look ill upon him, as my daughter also did (his sister Bell) for none else in all the family knew any thing of the matter but she and I. After supper he went away, and the next night he sent his page (I think it was) with a letter to me, he gave it to my woman, and she brought it to me; where he says that he would not go out of town.——If your lordship please I will give you the letter——But he said, he feared my apprehensions of him would continue.——There is the letter.

L. C. J. Show it my lord Grey, let us see if he owns or denies it.

Lord *Grey.* Yes, pray do, I deny nothing that I have done.

Mr. Just. *Dolben.* Be pleased, madam, to put it into the court.

Att. Gen. It is only about his keeping away.

L. C. J. Shew it my lord Grey.

Serj. *Jeff.* With submission, my lord, it is fully proved without that.

L. C. J. Then let the clerk read it, brother.

Cl. of Crown. There is no direction, that I see, upon it. It is subscribed Grey.—[Reads.]

"Madam;

"After I had waited on your ladyship last night, sir Thomas Armstrong came from the D. of M. to acquaint me that he could not possibly go into Sussex; so that journey is at an end. But your ladyship's apprehensions of me I fear will continue: therefore I send this to assure you, that my short stay in town shall no way disturb your ladyship; if I can contribute to your quiet, by avoiding all places where I may possibly see the lady. I hope your ladyship will remember the promise you made to divert her, and pardon me for minding you of it, since it is to no other end that I do so, but that she may not suffer upon my account; I am sure if she doth not in your opinion, she never shall any other way. I wish your ladyship all the ease that you can desire, and more quiet than ever I expect to have. I am with great devotion, Your ladyship's most humble, and obedient servant, GREY."

Att. Gen. Madam, will you please to go on with your evidence.

Lady *Arabella.* I have one thing more to say: After this, three or four days after this ugly business was found out, I told my lady Harriett, she was to go to my sister Dursley's. She was in a great anger and passion about it, which made my mother so exasperated against her, that I was a great while before I got my mother to go near her again.

Serj. *Jeff.* My lady Berkeley, please to go on?

Lady *Berkeley.* When I came to my daughter, (my wretched unkind daughter, I have been so kind a mother to her, and would have died rather, upon the oath I have taken, than have done this, if there had been any other way to reclaim her, and would have done any thing to have hid her faults, and died ten times over, rather than this dishonour should have come upon my family.) This child of mine, when I came up to her, fell into a great many tears, and begged my pardon for what she had done, and said, she would never continue any conversation with her brother-in-law any more, if I would forgive her; and she said all the things that would make a tender mother believe her. I told her, I did not think it was safe for her to continue at my house, for fear the world should discover it, by my lord Grey's not coming to our house as he used to do; and therefore I would send her to my son's wife, her sister Dursley, for my lord Grey did seldom or never visit there, and the world would not take notice of it. And I thought it better and safer for her to be there with her sister, than at home with me. Upon which this ungracious child wept so bitterly, and begged so heartily of me that I would not send her away to her sister's, and told me, it would not be safe for her to be out of the house from me. She told me, she would obey me in any thing; and said, she would now confess to me, though she had denied it before, that she had writ my lord Grey word that they were discovered, which was the reason he did not come to me upon the first letter that I sent him to come and speak with me. And she said so many tender things, that I believed her penitent, and forgave her, and had compassion upon her, and told her (though she had not deserved so much from me) she might be quiet (seeing her so much concerned) I would not tell her sister Dursley her faults, nor send her thither, till I had spoken with her again. Upon which, she, as I thought, continuing penitent, I kissed her in the bed when she was sick, and hoped that all this ugly business was over, and I should have no more affliction with her, especially if my lord removed his family to Durdants, which he did. When we came there, she came into my chamber one Sunday morning before I was awake, and threw herself upon her knees, and

kissed my hand, and cried out, Oh, madam! I have offended you, I have done ill, I will be a good child, and will never do so again; I will break off all correspondence with him, I will do what you please, any thing that you do desire. Then, said I, I hope you will be happy, and I forgive you. Oh; do not tell my father, (she said) let not him know my faults. No, said I, I will not tell him; but if you will make a friend of me, I desire you will have no correspondence with your brother-in law; and though you have done all this to offend me, I will treat you as a sister, more than as a daughter, if you will but use this wicked brother-in-law as he deserves. I tell you that youth, and virtue, and honour, is too much to sacrifice for a base brother-in-law. When she had done this, she came another day into my closet and there wept very much, and cry'd out, Oh, madam! it is he, he is the villain that has undone me, that has ruined me. Why? said I, What has he done? Oh! said she, he hath seduced me to this. Oh! said I, fear nothing, you have done nothing, I hope, that is ill, but only harkening to his love. Then I took her about the neck and kissed her, and endeavoured to comfort her. Oh, madam! said she, I have not deserved this kindness from you; but it is he, he is the villain that hath undone me: but I will do any thing that you will command me to do; if he ever send me any letter, I will bring it to you unopened; but pray do not tell my father of my faults. I promised her I would not, so she would break off all correspondence with him——

[Here she swooned, and soon after recovered and went on.]

————Then my lord Grey's wife, my daughter Grey, coming down to Durdants, he was to go to his own house at Up-Park in Sussex, and he writ down to his wife to come up to London.——It is possible I may omit some particular things that were done just at such or such a time, but I speak all I can remember in general. My lord Grey, when I spoke to him of it, told me, he would obey me in any thing; if I would banish him the house, he would never come near it; but then he pretended to advise me like my own son, that the world would take notice of it, that therefore it would be better for me to take her abroad with me, he would avoid all places where she came, but he thought it best for her not to be kept too much at home, nor he absolutely forbid the house, but he would by degrees come seldomer, once in six weeks or two months. But to go on to my daughter Grey's coming down to Durdants; he writing to his wife to come up to London, that he might speak to her before he went to his own house at Up-Park; my daughter Grey desired he might come thither, and it being in his way to Sussex, I writ him word, that believing he was not able to go to Up-Park in one day from London, he might call at my lord's house at Durdants, and dine there by the way, as calling in, intending to lie at Guildford, for it is just the half-way to Guildford. He, instead of coming to dinner, came in at nine o'clock at night (I am sure it was so much) for it was so dark, we could hardly see the colour of his horses, from my lord's great gate, to the place where we were in the house: And coming at that time of night, I thought if I turned him out of the house, my lord would wonder at it, and so would all the family. Therefore I was forced, as I then thought, in point of discretion, to let him lie there that night, which he did; and he told me, Madam, I had not come here, but upon your ladyship's letter, nothing else should have brought me: because I was to give him leave to come, knowing the faults he had committed against the honour of our family. Upon which I told him, My lord, I hope you have so much honour and generosity in you, after the promises you have made me, and the confidence and indulgence I have shewn you, that you will give my daughter no letters, and I will look to her otherwise, that you shall have no conversation with her. He desired me to walk up with him into the gallery, and there he told me he had brought no letters, and would have had me looked in his pocket. I told him that would be to no purpose, for his man Charnock (whom we knew he did not prefer from being his coach-man to be his gentleman, but for some extraordinary service he did him, or he thought he would do him) might have letters enough, and we be never the wiser: but I trusted to his honour and his christianity: and I told him, that his going on in any such way would be her utter ruin. He told me he would not stay there any longer than the next day; nay; he would be gone immediately if I pleased, and he sent his coach to London, and had nothing but horses left. But his wife desiring her husband to stay, I had a very hard task to go through, being earnestly pressed, both by her and my own lord's importunities for his stay. But my lord Grey, whilst he was there, did entertain me with his passion, he had the confidence to do it, and he wished himself the veriest rake-hell in the world, so he had never seen her face since he was married. And, said he, madam, you will always think me a villain and never have a good opinion of me, I shall be always unfortunate, both in myself, and your bad opinion of me. Seeing this, I thought it was time to do something more; and I told him that night he should stay no longer, he should be gone; and his wife seemed to be much concerned, and would fain have him stay. For by this time she began to find out that there was some disorder in her mother and the family, though she knew not what it was; and she sent her sister Lucy to beg he might stay I told her I would not suffer it: however, she proposed an expedient how her sister Harriett should take physic, and keep her chamber while he was there. That I was in a sort compelled to do, and I told him, upon their importunity for his stay, that his sister Harriett should be seen no more by him, but take physic while

he stayed there: to which he replied, Madam indeed it is rude for me to say it to you, but I must say it, give me my choice, either to be drowned or hanged. Upon this I was extremely disturbed, and the next morning, I told him, I *was not satisfied he should stay in England he had ordered his wife to go into France, and she was to go within a month after, I would have him go with her. He told me, he had* law-suits, and he could not; I told him, he had told me before, they were of no great consequence, and therefore they could not hinder him; and I pressed him very much, and I fell into a great passion at last; and told him, if he would not go, I would tell her father and he should take care of her, to send her where she should be safe enough from him. For I was sensible the world would take notice if he came not thither; and, said I, I am not able to bear you should. Upon this, he promised me with all the oaths, imprecations, and promises in the world, that he would go and follow his wife into France at Christmas, and stay there eight months; and by that time, I did hope, this unfortunate miserable business might be over: for I had a great kindness for my child, and would have done any thing to save her, if it had been in my power, or would yet do any thing: I would give my life that the world did not know so much of it as now it must this day. The world knows I had always the greatest kindness and tenderness for her, which was such, that some that are now here have said since that it was my indulgence to her, and not making it known to my lord, that encouraged this last ill business. And thereupon my lord Grey was ordered by me to go away, and he promised me so to do, which was upon Saturday. I then went up to her chamber, and saw her very melancholy, and did what I could to comfort her. Said I, I warrant you, by the grace of God, do but do what you ought, and I will bring you off this business; be chearful, and be not so much cast down (for I thought she was troubled at my carriage to her) and though I said some severe things to you at dinner (as I did talk of her going away, and being sent abroad) be not troubled, for I only meant it out of kindness to you; for all I design, is only to seek an occasion of getting him away; and therefore, as long as he stays, I will seem to whisper with you, and look frowningly upon you, and that if he hath any tenderness for you, he may see I am angry with you and do the more to leave you at quiet: but take no notice of it, for I now smile to you, though I frowned before him, be not affrighted. In the afternoon I told her the same thing again. But then, said she, he will shew my letters to him, and that will ruin my reputation for ever, and that troubles me; but yet it need not, for I never writ to any man but him, and if he doth shew them, he will expose himself for a base unworthy man, and I can but deny it, and he can never prove it. This is true, said I, and very well said, and therefore be not afraid of him, but trust to the friendship of your mother, and do as you ought to do, and I am confident we shall bring you clear off from this ugly business. And then, said she, but oh, Madam! my sister, my sister Grey, will she *forgive me this? I told her, her sister Grey was good-natured and religious, and I* made no doubt she would forgive her the folly of her youth, and if she would take up yet, she was young, and her sister would impute it to that, and, said I, I am sure she will forgive you; and I told her, I would do all that lay in my power to assist her; and I bid her be chearful and trust in God and in my friendship. She was to blame, indeed, she acknowledged, but she was young, and he was cunning, and had made it his business to delude and intice her. I told her it was true, and therefore now she must consider with herself, what was to be done to bring her off, which I doubted not, if she would do but as she ought; she promised me so to do; and yet that very night when I was in my sleep she ran away.-

[Here she swooned again]

Serj. *Jeff.* What time went my lord Grey away, madam, that day?

Lady *Berkeley.* He went away about four o'clock in the afternoon.

Serj. *Jeff.* And the ensuing night the lady was gone?

Lady *Berkeley.* Yes, that night she went away too.

Serj. *Jeff.* My lord, I crave leave to acquaint you with one circumstance that has been already hinted, that is about Charnock, a person that is taken notice of by both the ladies that have given evidence, and one of the defendants in this information. This man, as they seem to intimate, for some extraordinary service he had done my lord Grey, or was designed for the doing of, was removed from the degree of his coachman, to the waiting upon him in his chamber. He at this time came with lord Grey to Durdants, a house of my lord Berkeley's near Epsom, and which was in the way to my lord Grey's house in Sussex, that is called Up-Park. And they being there, notwithstanding all those protestations and promises made by my lord Grey to his lady mother, as you have heard, to meddle no more in this matter, yet we shall give you an account, how that the day before the night that the young lady went away, my lord Grey was very importunately busy with his man Charnock; what discourses they had, or what directions he gave him perhaps may not be known; but his earnestness in talking with him, and his impatience and restlessness we shall prove; and then give you a very full proof that Charnock was the person that took her away; and then let the jury and the court make the conclusion.

Att. Gen. It may be, my lord, we shall not be able to prove the actual taking-away from thence, but only by undeniable circumstantial proof. Such impieties use not to be acted openly.

L. C. J. Truly, as far as I can see, here has

been more done barefaced, than one would think should be done in any Christian nation.

[Then a Clergyman that stood by was sworn, but his name not told.]

Serj. Jeff. Pray, Sir, will you tell my lord and the jury what you know.

Mr   My lord, I was at Durdants, my lord Berkeley's house near Epsom in Surrey, at the time of this ill accident, and some time after. And upon the Saturday in the afternoon I (immediately after dinner was over at my lord's own table) walked in the great paved hall; and stood in the door that looked towards the Downs; and my lord Grey came into the hall alone, and walked three or four times very thoughtfully, and then leaned upon the window, and often looked upon the ground, and within a little while he steps into the steward's hall, where the gentlemen were at dinner, and he calls to Charnock, who came out to him. He takes him out of the hall to the foot of the stair-case, and there they talked together a great while, and after some time my lord Grey went away, and Charnock did so too, I think to his dinner again, I cannot tell any thing to the contrary. The reflection I made upon this passage then was, that my lord Grey was very punctual in giving his servant orders, which I thought he was to carry to London with him, but I suspected nothing of this matter, nor any thing else that was ill then. Mr. Charnock then passing by me, said I, Mr. Charnock, how long will it be before you are going? He made me no answer, not one word. Thereupon I went into the library, and between that and Mr. Charnock's chamber there was but a very thin wall, and presently after I came into the library, my lord Grey sent one (as the messenger said) for Mr. Charnock, and he went down to him, as I suppose, and in a little time, came up again. And after that, I do believe, I did hear another messenger come from him to Mr. Charnock again, I will not swear that, for I am not sure of it; because, being at that time busy in reading I made no reflection upon it till afterwards. But about a fortnight or three weeks after, there comes a gentleman to see me at my lodgings, and falling into discourse what news there was; our first discourse was of the lady's being missing; he said, it would be sad he feared when she was heard of. Why, said I, what do you mean? I suppose Mr. Forrester and she are together, for that was the talk of the town. No, said he, it is no such thing; but if you will make it a secret, unless it comes to be made a public business, I will tell you; I do not doubt my lord Grey carried her away with a design to debauch her. That is hard to be believed, said I; I cannot believe it. Why, said he, you were there when he went away? Yes, said I, but how long was that before the lady was missing? said he, it was that afternoon. Then came into my mind his earnest discourse with Charnock and that which I observed about it, and sending so often for him; and I told that person of it. Why Charnock, said he, was the man that took her away.

Serj. Jeff. Who was it that said so to you, Sir? Name him.

Mr.   Mr. Rogers, my lord Berkeley's chaplain.

Serj. Jeff. If your lordship please to observe the particular times, when my lord Grey was so earnest in giving Charnock directions, that was on the Saturday at noon, and it was that night the young lady went away.

L. C. J. When came my lord Grey to my lord Berkeley's?

Att. Gen. The Tuesday or Wednesday before, I think; some days it was.

Serj. *Jeff.* But upon the Saturday night it was she went away; this unfortunate lady that we have produced, her mother, and so the lady her sister, spoke both of their fears of Charnock. Now we shall prove, that this Charnock was on Sunday morning, at eight o'clock in the morning, here in London, with a young lady, in what habit that young lady was, our witnesses will tell you; and others will give you an account what habit this lady went away in, and then it will be seen who she was. Call Eleanor Hilton.

Att. Gen. But if you please, Mr. Serjeant, I think it will be proper first to examine my lady Lucy, who upon the missing this young lady, followed my lord Grey to Guildford, and overtaking him, acquainted him with it, and immediately he took post and came to London. Pray swear my lady Lucy.

[Which was done, she being in a box by the bar.]

L. C. J. Well, what do you ask that lady?

Serj. *Jeff.* We produce her, my lord, to hear what passed between her and my lord Grey at Guildford. Pray, madam, will your ladyship acquaint the Court what occasion you had to go to Guildford, and what you said to my lord Grey, and what he said to you, and did afterwards.

Lady *Lucy.* My lord, as soon as my lady Harriett was missing, supposing my lord Grey could best give an account where she was, I went after him to Guildford, and he was gone half an hour from thence before I came thither, but by sending post after him, he was overtaken, and came back to me. I told him my lady Harriett was gone away, and I conjured him by all that was sacred and dear to him, to prevent so great a misfortune as this would be to the family. He then pretended he did not know any thing of her going, but promised me, that if he could find her out, he would endeavour to persuade her to return home, but he would not force her. After several discourses, which it is impossible for me to remember particularly (saying that he had done nothing that was illegal, and if she did not any thing, we could do nothing against him;) he at last parted from me, to go to London, as I suppose. I begged of him that I might be permitted to go along with him, that I might

speak to her, supposing I might retrieve this business, and recover her, before it were gone too far, but he denied it me, and went away. After that I met him, a day or two after, I think, I cannot tell justly the time, and he pretended, he did not know where she was, but only he knew where to send to her; and he would do all he could to get her to return home. He was sensible of what a misfortune this was to the family. But soon after he went to Up-Park again, as he said, to shew us that he was not with her. And he afterwards writ me a letter, wherein he says, he could not persuade her to come home, but the conclusion of it was, "He would do all he could to restore peace and quiet to the family, which by his follies were so miserably disturbed."

Lady *Arabella*. My lord, I desire to speak one thing; about six weeks ago I met my lord Grey at my lord chief justice's chamber, and he told me, he had my lady Harriett Berkeley in his power, or in his protection, or to that effect, he said.

Att. Gen. Pray tell, Madam, when that was?

Lady *Arabella*. About six weeks ago, I cannot justly say the day.

Serj. *Jeff.* But if your ladyship pleases, my lady Lucy, it will very much satisfy the jury, if you would shew the letter you speak of.

Mr. *Williams*. Ay, pray shew the letter.

Lady *Lucy*. It was a letter before that which he writ to me at Durdants.

L. C. J. When was that letter you speak of written?

Lady *Lucy*. About a week after my sister was gone, I cannot exactly remember the day.

Mr. *Williams*. Pray, Madam, can you produce that letter?

Lady *Lucy*. No, I have it not here.

Serj. *Jeff.* Then swear Eleanor Hilton. [Which was done.]

Sol. Gen. Is your name Eleanor Hilton?

Mrs. *Hilton*. Yes, it is, Sir.

Att. Gen. Pray speak out, that my lord and the jury may hear you. Do you remember the 20th of August last? Did Charnock come to your house with a young lady? Did you see her, and what time of the day was it?

Hilton. I cannot tell what time of day it was.

Serj. *Jeff.* What day of the week was it?

Hilton. It was on a Sunday.

Sol. Gen. What month was it in?

Hilton. I cannot tell, truly.

Serj. *Jeff.* About what time of the year was it?

Hilton. About eight or nine weeks ago, or something more.

Serj. *Jeff.* Well, what did you see then?

Hilton. There was a young lady that came to our house, she came of herself, Charnock he was not with her; he came before indeed, and asked me if I had any room to spare, and I shewed him what we had; he went away, and I saw no more of him; afterwards, as I said, she came; but who she was, or what she was, I cannot tell.

Serj. *Jeff.* Can you describe her clothes?

Hilton. She had a coloured night-gown on of several colours; I cannot say what particular stuff it was: and she had a petticoat on white and red.

Serj. *Jeff.* Did you see her face?

Hilton. I cannot say I did fully.

Att. Gen. Do you think you should know her again, if you should see her?

Hilton. I cannot say that.

Serj. *Jeff.* (To the lady Harriett) pray Madam, will you stand up a little, and turn up your hood. [Which she did.]

Hilton. Truly I cannot say that is the lady.

Att. Gen. Do you believe it was she?

Hilton. I cannot say it truly.

Att. Gen. Have you seen her picture since, and is this lady like that picture?

Mr. *Attorney*. She says, she cannot say it is the same lady.

Sol. Gen. Pray, Mistress, to what purpose was she brought to your house?

Hilton. They did not tell me that.

Att. Gen. Was it not to lodge there?

Hilton. She staid there but a while, and went away again.

Att. Gen. Whither did she go then?

Hilton. To one Patten's in Wild-street.

Serj. *Jeff.* You went with her, mistress, did not you?—*Hilton*. Yes, I did so.

Serj. *Jeff.* Pray, was there any letter or note brought to your house for Charnock?

Hilton. Yes, I brought it to Mrs. Charnock.

Serj. *Jeff.* Did you hear any reason given for her removal from your house?

Att. Gen. Pray did she go to bed at your house?—*Hilton*. She did lie down.

Serj. *Jeff.* What time of the day was it?

Hilton. About nine or ten in the morning.

Sol. Gen. Pray, did she say she had been at church, or what did she say?

Hilton. She said somewhat to that purpose, she said she was weary.

Serj. *Jeff.* What company came to the lady, while she was at your house?

Hilton. No body but Mrs. Charnock.

Serj. *Jeff.* Did you see Mrs. Charnock in her company?—*Hilton*. Yes.

Serj. *Jeff.* You saw her come in to her?

Hilton. Yes.

Serj. *Jeff.* Did she behave herself to her, as to a lady of quality?

Hilton. I cannot tell that, truly.

Serj. *Jeff.* Why, how did she carry it to her?

Hilton. Whether she was in bed or no, I cannot tell; but when she came in, the young lady said, How do you, Mrs. Charnock? She said, Your servant, madam, or to that purpose, I cannot exactly tell.

Serj. *Jeff.* You brought the note to Mrs. Charnock, you say?—*Hilton*. Yes.

Att. Gen. Did she stay at Mrs. Patten's after that?—*Hilton*. I suppose she might.

Sol. Gen. Pray recollect yourself a little, and tell us what colour was her manteau?

Hilton. Truly, it was all manner of colours, red, and green, and blue, and I cannot tell what colours.

Att. Gen. What coloured petticoat?

Hilton. Red and white.

Sol. Gen. How long after this, did you hear my lord Berkeley's daughter was missing?

Hilton. A while after.

Att. Gen. How long? Was it that week?

Hilton. I cannot tell, it was not long after.

Att. Gen. Was it the same lady that came to your house in those clothes, that went to Patten's at night?

L. C. J. Why, she says she went with her, do not examine her the same things over again

Att. Gen. Were you examined before sir William Turner, about this matter?

Hilton. Yes, I was.

Att. Gen. Was it the day of the month you then said it was?

Hilton. I suppose it might; I cannot tell the day of the month.

Att. Gen. Was it the month?

Hilton. It is like it was.

L. C. J. She has fixed it now to be 8 or 9 weeks ago.

Serj. *Jeff.* Did she give any reason why she was removed?—*Hilton.* None at all.

Serj. *Jeff.* Now, my lord, we will bring it down to be this very lady. My lady Arabella, Pray, madam, what clothes did my lady Harriett go away in?

Lady *Arabella.* My lady Harriett had such clothes as they speak of, I cannot say she went away in her night gown, but here is one that can: But there was a striped night-gown, of many colours, green, and blue, and red.

L. C. J. She does remember she had such a one, but she cannot say she went away in it.

Serj. *Jeff.* Was there not a chequered petticoat red and white?

Lady *Arabella.* She had such a petticoat, but I cannot say she went away in it; she had also a white quilted petticoat.

Serj. *Jeff.* Then swear Mrs. Doney (Which was done.) My lord, we call this gentlewoman to give an account what habit she went away in; for she lay with her always.

Att. Gen. Did you lie with my lady Harriett Berkeley, when she stole away?

Mrs. *Doney.* Yes, indeed, Sir, I did lie in the chamber that night, and she went away with her morning clothes, which lay ready for her there, against she did rise in the morning. It was a striped night-gown of many colours, and a petticoat of white and red, and a quilted petticoat.

Att. Gen. Was she so habited, that came to the house, Mrs. Hilton?

L. C. J. She has said so already.

Serj. *Jeff.* Now you are pleased to observe, that besides the circumstances of the clothes, there is mention made of a note; Mrs. Hilton says she received a letter and gave it to Mrs. Charnock; and that soon after they went to Patten's house in Wild-street. We shall call the people of that house, to give an account what gentlewoman it was that came to their house. Pray swear Mr. Patten. [Which was done.]

Sol. Gen. Pray, will you tell my lord and the jury, whether Mr. Charnock and his wife came to your house, and with whom, and about what?

Mr. *Patten.* My lord, about the latter end of July, or the beginning of August, Mr. Charnock and his wife came to my house when we were just removed, to take some lodgings for a person of quality; but they did not say who. Said I then, We have no lodgings now ready; said they, We shall not want them yet, till towards the middle of September. Says my wife, I suppose by that time our house will be ready; and if it will do you any kindness you may have it. About the 20th of August being Sunday, Mrs. Hilton brings a gentlewoman with Mrs. Charnock to my house; and when they were come, they called me up, and seeing them all three there, I told Mrs. Charnock, We have no lodgings fit for any body of any quality, at present. Says Mrs. Hilton, Let's see the candle, and runs up stairs into a room where there was a bed, but no hangings; when they came in, they locked themselves into the room. My wife's daughter being in the house, I desired her to send for my wife, who was then abroad; which she did. They desired my wife's daughter to lodge with the gentlewoman that they brought thither, and they were making the bed ready. I sent them up word, That I desired they would walk into the dining-room for the present; they sent me word down again, They did not desire to do that, for they were afraid the light would be seen into the street, and withal, if any body came to enquire for Mrs. Charnock, or Mrs. Hilton, I should say there was no body there. Presently after, I think (or before I cannot justly say which) a letter was carried up stairs to them, upon which they came down stairs, and away they went up the street, and when they were gone a little way on foot, Mrs. Charnock desired them to turn back again, for she hoped to get a coach, and she did so, and went away.

Att. Gen. So they did not lodge there?

Mr. *Patten.* No, they did not.

Serj. *Jeff.* Did they say any thing of care that was to be taken, how they passed by my lady Northumberland's?

Mr. *Patten.* My lord, I do not well remember that: But the next day Mrs. Hilton comes again to our house, and she runs up stairs into the same room, and sits her down upon the bed-side. Said I to her, Mrs. Hilton, What gentlewoman was that that was here last night? Says she, I cannot tell, but I believe she is some person of quality, for Mrs. Charnock brought her to our house at 7 o'clock in the morning. But whoever she is, she is much troubled, we could get her to eat nothing, but her eyes were very red with crying, and we came away to your house at night; because hearing some noise of people in the street, she was afraid some of her father's servants were come, but it was only some people that were gathered about to observe the blazing star. So we whipped out of the door, and so came to your

house, for we had never a back-door out of our own.

Att. Gen. Pray give an account what habit the gentlewoman was in that came to your house.

Mr. *Patten.* She had a striped flowered gown, very much sullied, it was flung about her, just as if she had newly come out of bed. I did see her face, but when I had just looked upon her, she clapped her hood together over it presently.

Serj. *Jeff.* Do you think you should know her again if you see her?

Mr. *Patten.* I believe I might.

Serj. *Jeff.* Pray, madam, stand up again, and lift up your hood. [Which she did.]

Mr. *Patten.* This is the lady. I saw her face twice, once as I told you, and then when she went away, I dropped down, and peeped up, and looked her in the face again, though she hid it as much as she could.

Att. Gen. Thus we have proved it upon Charnock and his wife.

Serj. *Jeff.* He gives an account of the 20th of August, which was the day after she went from her father's house. Pray call Mrs. Fletcher.

Att. Gen. We shall now prove that they went from thence to one Mr. Jones's; that my lord Grey came there to take lodgings, and after she was brought, came thither again, and though he changed his hair into a perriwig, yet he was known for all his disguise.

Sol. Gen. My lord, you see that it is proved upon three of the defendants, my lord Grey, and Charnock, and his wife; now we shall prove it upon the other two, the Jones's. Swear Mary Fletcher. [Which was done.]

Serj. *Jeff.* Sweetheart, pray tell the court where you lived, and when my lord Grey came to your house; tell the time as near as you can, and the day of the week.

Fletcher. Sir, he came to David Jones's on the Tuesday after my lady Berkeley was missing.

L. C. J. Where does David Jones live?

Fletcher. At Charing-cross just over against the Statue. And living there, my lord Grey came there in a hackney coach, first on the Monday without a perriwig, or any thing of that, and desired Mr. Jones to come to the coach side, which he did, and after a little discourse with Mr. Jones, they both came into the house, and went up two pair of stairs to look upon lodgings. After that, I had order to make ready the room for some lodgers who were expected to come that night, but did not till the next day. About Tuesday at nine of the clock, my lord Grey comes again in a coach to the door, and threw his cloak over his face, he was then without his perriwig too, and desired to speak with Mr. Jones: I and my fellow servant standing at the door, he desired to speak with my master. I went to him, and told him, he came up, and after he had been at the coach side, he bid us go down, and keep down in the kitchen, and would not let us come up any more. And afterwards my fellow servant and I were bid to go to bed, and my mistress shut up the shop-windows herself.

Serj. *Jeff.* Well, go on, what happened after that?

Maid. Afterwards there was the warming-pan, and the candlestick, and other things were carried up into the chamber by my mistress's sister. Says my fellow servant, there is some great stranger sure, come to lodge here, that we must not know of. Ay, said I, this is some great intrigue or other. After a while came in some company that stayed all night. I know not who they were, or how they came.

Serj. *Jeff.* Well, what was done the next morning?

Maid. I was never admitted into the room while they were there, but through the opening of the door I did see one lady in bed, but I cannot say who she was, nor what she was.

Att. Gen. Do you know her if you see her again? Look at that lady; is that she?

Maid. No, I do not know her; I cannot say that is she: My mistress, and my mistress's sister stood both before me, when I just peeped into the room, and when she perceived that, I did see her pull the clothes over her face.

Sol. Gen. How long did she stay there?

Maid. Nine nights.

Serj. *Jeff.* Do you know my lord Grey well?

Maid. Yes, I have seen him often.

Serj. *Jeff.* Did you know him notwithstanding his disguise?—*Maid.* Yes.

Serj. *Jeff.* What did Mrs. Jones say to you about my lord Grey?

Maid. She said to us, what fools were we, to say this was my lord Grey, it was a country gentleman.

Serj. *Jeff.* But you are sure it was my lord Grey?

Maid. Yes, I am sure it was he.

Att. Gen. Did any body else lodge at your house at that time?

Maid. Yes, captain Fitz-Gerrard.

Att. Gen. What discourse had you with him about this lady?

Mr. *Williams.* You, woman, did my lord Grey stay there?

Maid. I cannot say he did.

L. C. J. Mr. Attorney, if the question you ask, be to introduce another part of your evidence from captain Fitz-Gerrard himself, it may be something, otherwise that can be no evidence against the defendants, what discourse was with another.

Serj. *Jeff.* It is so, my lord: and therefore we ask you, sweetheart, what past between you and the captain?

Maid. Captain Fitz-Gerrard, the Monday morning seven-night, after my lord Grey first came, called me to his bed-side, and asked me if I knew what lady that was that lodged in the house, and what clothes she wore, and whether she were young or old; and whether she were

married or no? I told him I could not tell any thing, for I could never see her.

Serj. *Jeff.* Do you know what linen she brought with her? Did you wash any for her?

Maid. Yes, one shift.

Att. Gen. What kind of shift was it?

Maid. I said, it could be no person of quality by her shift.

Serj. *Jeff.* Why so?

Maid. Because the body was finer than the sleeves, and ladies use to make the sleeves finer than the body. [At which there was some laughing.]

Mr. *Williams.* A very pretty evidence!

Serj. *Jeff.* Pray call Mrs. Doney again, because you shall not make so slight a business of the shift as you pretend, for such actions as these must be detected by circumstances.

Att. Gen. Mrs. Doney, pray did you shew this woman another of my lady Harriett Berkeley's shifts?

Mrs. *Doney.* Yes, I did.

Serj. *Jeff.* Was it the fellow of that she went away with?—Mrs. *Doney.* Yes, it was.

Serj. *Jeff.* Woman, do you believe, upon your oath, that was the fellow of the shift you saw?—*Maid.* Yes, Sir.

Serj. *Jeff.* Was the body of that you saw from this gentlewoman, finer than the sleeves?

Maid. Yes, it was.

Sol. Gen. Then pray swear captain Fitz-Gerrard. [Which was done.]

Sol. Gen. Pray, Sir, will you tell the court and the jury, what passages fell out at your lodging?

Capt. *Fitz-Gerrard.* My lord, It was my fortune six months ago, to take a lodging at Mr. Jones's, and while I kept my lodgings there, I had occasion sometimes to go to Windsor, to wait upon his majesty; and one night coming home to my lodging, my servant that waits upon me in my chamber, told me, there was a lodger lately come to the house, who lay in the upper rooms. I asked who it was; he told me, the maid of the house told him it was a mistress of my lord Grey's. I asked how long she had been there; he said, it was but two or three days since she came. I never thought of this for four or five days after, nor thought myself obliged to take notice of the discourse of the servant in the house; but being in Covent-Garden in company, there was some discourse about my lady Harriett Berkeley's being gone from her father's, as it was the talk of the town. I came home about nine o'clock at night, and having no servant just then ready to wait upon me, Mr. Jones himself came very kindly to put me to bed. I had some fancy upon the discourse of the town, this might be my lady Harriett. Upon which I said to Mr. Jones, you cannot but hear of the report of my lady Berkeley's being run away from her father, and I know you have a dependance upon my lord Grey, and I have a suspicion you conceal her in your house. If you do, said I, you do a very dishonest thing, a very ill thing, and occasion a great deal of trouble and disquiet to a noble family. And possibly my lord and my lady may not know she is alive; therefore, I desire you as a friend, to make a discovery of the lady, that they may know where she is. He seemed very angry upon my saying of this, and told me, As long as I lodged in his house quietly, I need not trouble myself who lodged there besides. Upon that I thought more earnestly upon this thing; and I told him again, I am resolved to go into the room, and know who this lady is that lies here, for now I suppose there is something more in it. Says he again, nobody shall offer such a rudeness in my house. Said I, I assure you I will do it. He grew very angry, but I went from him to my sword and was going up. Says he, pray Mr. Fitz-Gerrard do not offer such a thing as this is; you would take it unkindly yourself to have your house searched at this time of night. Well, said I, upon condition that I may see her to-morrow morning before she goes away, who she is, I will make no disturbance in your house to-night. Upon that he left the room, promising me, I should to-morrow morning see who the lady was. I went out early the next morning upon some necessary business, and coming home between eleven and twelve o'clock, said I to him, now is a very civil time to see this lady, who she is, for it is not fit you should receive any person into your house, in such circumstances, when there is such a cause of suspicion. Says he, she is now gone out of the house. And this is all that I can say in this matter, I never saw the lady there then, nor did I ever see her in my life, but once or twice at Epsom.

L. C. J. Did they lock the door upon you, captain?

Capt. *Fitz-Gerrard.* No, they did not.

Serj. *Jeff.* And you know nothing more?

Capt. *Fitz-Gerrard.* I neither knew when she came, nor who she was.

Att. Gen. Then swear Mr. Smith here, who married one of my lord Berkeley's daughters.

[Which was done.]

Mr. *Smith.* Before my lord Berkeley made his affair public, he used all means possible to know where my lady Harriett was; and after it was known to him what concern my lord Grey had in it, there were all means used to make it up: and discoursing with my lady Berkeley about it, it was proposed that she should be married, but that would cost a great deal of money; that my lord did not stick at, nor my lady, if any divine of the church of England did think it proper to treat with any parson about it, after such a secret correspondence between her and my lord Grey. And my lord said, If my lord Grey would not prosecute her with any more visits, he would give a sum of money to marry her. Said I, then, my lord, will you give me leave to wait upon my lord Grey in it? He answered, Yes. So I went to him, and offered him that my lord Berkeley would give 6,000*l.* with her, if he

would place her in a third hand, where it might be convenient to treat with any one about it. He talked with me as if he knew where she was, but would not discover it. Says he, You must always suppose, I will take your proposal in this manner, if she is in my power, which it may be she is, it may be not. Said I, My lord, you make that, (if) only as a subterfuge, for to be sure, you know where she is. Says he, She is beyond seas, and if you will give me leave to visit her sometimes, I will promise she shall come again ; but that depends upon time and tide, it cannot be so very soon. Said I, my lord, you may as well send horses to Dover, and so over to Calais, for I suppose she may not be far. He said it would be a work of time, but he would write to her. I desired he would write that night. For, said I, my lord, if this business be taken in time, she may yet be saved, if you will contribute what you can to it. He promised me to write that night to her, but it would be some time before she got to town. Then discoursing further with my lord about it. Says he, if I should bring her to town, I will not use any force or persuasion to her, if she be obstinately bent not to come home again ; betray her to be sure I will not. I am sure, my lord, said I, that your persuasions would do very much with her, and a great deal of good may come of it, if the matter be speeded. But, says he, if I should bring her to town, then my lord Berkeley would disturb her with my Lord Chief Justice's Warrant. Said I, if you will bring her to town, I will ask my lord and my lady, how long time they will allow for the making up of this treaty; and in the mean time, she shall be free from any disturbance. Says my lady Berkeley, when I spoke to her of it, Though my lord Grey has been so barbarous to a family, that has been so kind to him; yet, if I give him my word, I will keep it inviolably to him ; and I do promise him, if he will bring her to any place where my daughter Lucy may visit her, I will engage there shall be no search made after her. And if he can contribute to carry her into a place where she may be safe, and not visit her himself, he shall have 2,000*l.* to do it. This message of my lord's being barbarous, Madam, said I, it is not fit for me to carry to my lord Grey, but you will promise not to take her away, if he bring her to town, but from the moment you know where she is, she shall be safe. Thereupon my lord Grey promised to write to her ; whether he did or not, I cannot tell. Afterwards he said he had writ, but she would not come.

Att. Gen. What expence has my lord been at in looking after her?

Mr. *Smith.* A great expence ; I cannot tell particularly.

Serj. *Jeff.* My lord, we have but one witness more, and that is a gentleman, who, by order from my lord and lady Berkeley, kept my lord Grey company, and he will tell your lordship what my lord Grey confessed to him, what a passion he had for the lady, and what methods he used to get rid of it, but could not. Swear Mr. Craven: [Which was done.]

Sol. Gen. Will you tell my lord and the jury, whether you were sent by my lord Berkeley, to be with my lord Grey at Up-Park, and what passed there between you?

Mr. *Craven.* My lord, the Wednesday after my lady Harriett Berkeley went away, my lady Berkeley told me, my lord Grey had proffered he would go down into the country for six months, to shew that he had no designs upon her; and therefore, if she would propose some friend of her's to go along with him to keep him company, he would be very well satisfied with it; and then my lady Berkeley told me she would fix upon nobody but me, if he would take me with him. Then I met my lord Grey on Wednesday morning at sir Thomas Armstrong's, and afterwards, went down to his house to him. When I came there, he met me on horseback, and came up civilly and kindly to me. I thought fit to give him a caution, having received such orders from my lady. My lord, said I, I am sorry I am forced to come upon such an account as this, to be a guard over your words and actions ; and I am very much troubled that this unfortunate thing has happened, and you are reputed to be the occasion of it. Says he, I do own, Craven, I have done a very ill thing ; but that is past, I cannot help that now ; but the thing that is to be thought on is, what is to be done for the future. My lord, said I, the best way, if I may give you my advice, were to send her home again, before any report be spread abroad of the business. How can that be? says he, I do not know where she is, but I have had a letter from her as I told my lady, I did believe I should find a letter here when I came down. I will shew you the letter, which he did. My lord, said I, this letter will be thought as of your penning before you came out of town. I cannot tell what they will think, said he, but here it is. Said I, my lord, I have a great respect for your lordship, and do very much desire, for your own reputation and honour, as well as their's, it may be made up in some way before it be too public. We were discoursing of this. How shall that be done, says my lord Grey. My lord, said I, if you would consent to this, to send her over into France, to Calais or Diep, we will there find some body that will help her into a nunnery ; and when she is there, she may write to her mother, that she found she had an intention to marry her to a match she could not by any means approve or like of, and therefore she went away to prevent her being forced to it ; and this would be as plausible a thing as any in the world. And when that letter should come, my lady Berkeley should shew it about to her friends ; nay more, she should go over herself to fetch her back again, that she might receive her into her house with honour. He said, that was a very plausible thing, and he would do it, if he could tell where she was; but her letter to him was, that she was gone from her father, but she did

not think fit to let him know where she was, for fear he should deliver her up again. Then my lord Grey asked me in what condition they were all at my lord Berkeley's about it. Said I, they are in such a confusion and trouble they are all mad almost. Says he, how does my lord bear it? Said I, he is so afflicted that it will go near to break his heart. Says, he, he is indeed one of the men in the world that is to be pitied; she pitieth him very much, but for her mother she doth not care. One day when we went out a shooting, as we did several days together; Mr. Craven, says he, I will tell you the whole intrigue between my lady Harriett and I. I have had a great affection for her ever since she was a child, and have always been taking great delight in her company; and keeping her company so often till she grew up, my passion grew to that height, that I could stifle it no longer, but I was forced to tell her of it, and then I could not speak to her of it, but writ. But withal I begged her to take no notice of it to any body, for if she did, it would ruin us both. She was very angry to hear of it, and neither by writing nor speaking could I perceive she had any affection for me again, till the parliament sat at Oxford; and then I did pursue my love and my amours, and at last, she one day told me. said she, I have now considered of it, and if you do not leave writing or speaking to me of this matter, the very first time you write or speak to me again, I will tell my father and mother of it. That struck him so, he said, that he did not know almost what to say or what to do, and he walked up and down just like a ghost; but he hid it as well as he could, that it should not be perceived by others. But that parliament being quickly dissolved, he did intend to go down to Sussex to his house there, being he found she was resolved against admitting his affection, and he would stay there several years, till he had weaned himself of his passion, and by that time she would be disposed of otherwise, and he might be at ease. And he hiding his trouble as much as he could from my lord Berkeley and my lady, forbore to speak to her, but only when he saw her he could not forbear looking earnestly upon her, and being troubled. My lord Berkeley, not knowing any thing of it, asked him to go to London with us and not to Sussex? he was very much persuaded by my lord and my lady to it: and at last, my lady Harriett Berkeley came to him, and told him, said she, you are very much persuaded by my father and mother to go to London and not to Up-Park, why do not you go with them? Madam, says he, you have stopped my journey to London, you have hindered my going with them, for I will rather suffer any thing than render you any disturbance, and if I go to London with you, I shall not be able to contain myself; but if I go to Sussex, I alone shall have the trouble of it. But one day, when my lord of Aylesbury was leading my lady Berkeley, and my lord Grey was leading my lady Harriett, she took my lord Grey's hand and squeezed it against her breast, and there was the first time he perceived she loved him again; and then she told him he should go to London with them; and he did go, and from that time, for a twelve-month before she went away, he did see her frequently, almost every night, pursuing his amour in writing, and speaking to her as often as he could have opportunity. And though my lady Berkeley put a French woman to lie with her, yet she did use to rise from the French woman, and he did use to see her. And one day, says he, do not you remember you came to the chamber door, and she was angry at your coming, and that the door was not bolted, and if you had come in you had found me there?

Serj. *Jeff.* Do you remember any such thing?

Mr. *Craven.* I do not unless it were at Durdants. And, says he, you cannot imagine what I have suffered to come to see her. I have been two days locked up in her closet without meat or drink, but only some sweetmeats.

Serj. *Jeff.* What did he say of his making addresses to other ladies to take off his passion?

Mr. *Craven.* He said, he did all he could, for he would fain have avoided bringing such an infamy upon his own family and his lady's, and he did endeavour to cool his passion, by making love to two other ladies, whom he courted, and enjoyed both of them, but yet all did signify nothing, he could not subdue it.

Att. Gen. Pray tell us what terms he insisted upon, for his parting with her, and what he said the law was in the case?

Mr. *Craven.* I told him, my lord, besides the dishonour you bring upon yourself and two noble families, you should do all that in you lies, to avoid the punishment that will come upon you for it by the law. Oh, says he, you mistake yourself in that, for you must think I have considered of all that before; they cannot do any thing in law against me for it; let them examine the case of Mrs. Heneage and my lord Cavendish.

Att. Gen. What, did he say he would not part with her but upon terms?

Mr. *Craven.* He said, I cannot persuade her and I will not betray her. Truly, said I, my lord, you had better betray her, and when she comes to be sensible of her own good, she will thank you for it. Then he owned he had her in his power, but would not part with her never to see her again.

Att. Gen. What were the terms he stood upon?

Mr. *Craven.* My lady Berkeley sent me to the coffee-house, and desired me to ask him, if he would give her an answer to what she had met him at my lord chief justice's about. My lord told me, he did not approve of sending her to the place proposed, but he would send her to his own sister, his brother-in-law Mr. Nevil's; I told my lady of it, who said, if he did state the case right to Mr. Nevil, she was sure he would not receive her, nor let him come to her if he did. After that Mr. Petit's was proposed, so he might visit her. But he did

say, if that be the design, that they would have her from me, and I not to come at her when I please, they shall never see her while they live, nor will I ever deliver her.

Serj. *Jeff.* We rest here, to know what they on the other hand say to it, and we think this foul fact is fully proved.

Lord *Cavendish.* My lord chief justice, I desire to be heard one word in this matter. This gentleman, Mr. Craven, that was last examined, has been pleased to tell a very long improbable story in itself, and amongst other things that he has said, he has been pleased to make use of my name impertinently enough: for he speaks of a case that that noble lord, he says, was pleased to mention to him. If he did mention that case to him, and did name my name, he also mentions the case of two ladies, he says, my lord was concerned with. I desire to know how he came to name my name, and not name the two ladies he speaks of, that that noble lord made his courtship to and enjoyed?

L. C. J. My lord Cavendish, I could have wished he had not named your lordship, because it was not at all to the purpose.

Lord *Cavendish.* My lord, I am not concerned at it at all, more than at the impertinency of his using my name.

L. C. J. I could have wished, indeed, the gentleman had spared your lordship's name.

Lord *Cavendish.* I desire to know why my name was mentioned more than the two ladies names?

Mr. *Craven.* My lord Grey did not mention the two ladies names to me.

Lord *Grey.* No, nor my lord Cavendish's neither; it is all a lie.

Lord *Cavendish.* I will believe my lord Grey's word more than I will his oath.

L. C. J. That your lordship may do if you please. But we must not do so here. Come, what say you to it on the other side?

Mr. *Williams.* May it please your lordship, and you gentlemen of the jury, I am of counsel in this case for my lord Grey and the other defendants: and that we may come closely to the question, I desire I may first state the question before you upon this information, and then you will the better judge how far the evidence that has been given, is pertinent to the issue that you gentlemen are to try. The parts of the information are these: that my lord Grey, and the rest of these defendants, should conspire together to ruin and destroy this young lady, and in the execution thereof, to bring this their conspiracy to effect, they did often solicit and entice her to adultery with my lord Grey; and in prosecution of these their ill purposes and designs, she was by force and arms taken away from the custody and tuition of the earl of Berkeley, her father, and being so taken away, my lord Grey, and the rest of them, did procure her to live scandalously with my lord Grey, in whoredom and adultery. These are the parts of the charge, and the question is, whether we are guilty of it? For the evidence, I dare presume to say, that they have not made any direct proof of the matter charged. On the other side, they have, I do agree, offered something conjectural, upon which a man may imagine and think what he will; but how far you are to conclude the defendants Guilty, out of those presumptions, must be left to you; I know you will very well consider of it. It is plain, we are in a very tender case; it is a case of honour on all sides, and I have often heard it, and always believed it, That persons of honour and quality in the world, would rather lose their lives than their honour. And I believe it is the opinion of my client, my lord Grey, as well as of the prosecutors in this information. And therefore, you, gentlemen, I doubt not, will expect to have a clear evidence to convict him of this crime. And it is not only his honour is concerned, but that also of another great, illustrious, and noble family, to which he is by marriage allied. So that the acquitting of my lord Grey of this matter, doth, in a great measure, acquit the other family of so great a scandal. For that will falsify the information, and by your verdict you will remove those stains, that else may stick on both sides. We are equally between the two families, and your consideration will be, whether you will lay a stain upon both of them, or acquit them both. Now there has been no proof against my lord Grey of any one point in the information.

L. C. J. No? Sure you are much mistaken; it is a direct proof against my lord Grey, I must tell the jury so, and therefore apply your defence to it as you can.

Mr. *Williams.* Truly, my lord, I hope it is not; and our case is best stated, by laying open the truth of the fact, and then the matter will plainly appear. I cannot go about to justify the passion and the folly, for I may well call it so, of my lord Grey and this young lady in this case. It is misfortune enough, to be accused of a thing of that nature, and it may be a great deal worse to be convicted. I shall agree there have been those transactions between them, that it may be, we cannot justify in strictness every thing that my lord Grey has done. But yet, we say he is not guilty of this information. We do agree, there has been an extraordinary passion, nay, I must say, a very unjustifiable one, between this lady and my lord Grey: but to conclude out of that, that because there was such an unreasonable, unjustifiable, extraordinary affection between them, therefore we must infer and conclude him guilty of this information, is a very forced unreasonable construction; for there are degrees in love, and we must not conclude the worst thing a man can be guilty of, because he is guilty of some degree. Then, to come home to the case of my lord Grey, we shall prove, and give your lordship and the jury undeniable satisfaction, that my lord Grey, so far from having inveigled away this young lady, or being any way instrumental to

the conveying her away, that he used all means he could to have prevented any thing of that nature before, by discovering to my lady Berkeley her mother, my lady Arabella, and my lady Lucy, her sisters, all persons of great honour, and her nearest relations, that she did intend to go away, by warning them, and giving them full notice, that there might be such an intention in the young lady. We shall prove likewise, that no man in the world could do more, when she was gone, to retrieve her. We shall make it out by undeniable circumstances, proved even by their own witnesses. It happened that my lord Berkeley and his family withdrew to a country-house of his near Epsom, in your county, gentlemen. My lady had some jealousy, as she has been pleased to testify, that there might be some extraordinary passion between my lord Grey and the young lady; having discovered it by some letters, as she hath given evidence. My lord Grey acquainted her with his suspicion, that she intended to go away, and was so just, that he did not conceal any one thing that he knew; yea, to acquit himself that he had no ill design himself, and if she did get away it was none of his fault, he produced a copy of a letter of admonition, which my lord Grey himself had written to her: and when my lady had heard his advice about it, and his counsel he gave her, she said, her father could not have given her better counsel. This was so early as July; in the beginning of August, my lord Berkeley going down to his country-house at Epsom, and the family removing thither. Then my lord Grey was sick here in town; and in this sickness of his, there was a letter sent to my lord Grey from his lady, desiring him to come down to my lord Berkeley's; but it seems he had been under some engagement to my lady Berkeley, not to come without her leave; and having regard to his word past to my lady, he would not do it. My lady Berkeley, in a few days after, sent for him herself, and therein thanks him that he was so just to his word and honour, that he would not come down without her invitation. Upon Tuesday before this unhappy lady went away from her father's house, my lord Grey came to my lord Berkeley's. When he came down, he was very kindly received by my lord and my lady. On the Thursday following my lady Berkeley acquaints my lord Grey, that this young lady had a design to leave her father and mother's family, and run away. My lord Grey was so frank with her, as to tell her; Madam, I have long suspected such a thing, as I have told you; but Madam, your daughter Harriett is all day in your eye, you may lock her up at night, and secure her if you please. This was a timely caution given before she made her escape. On the Friday following comes a letter from an unknown hand to my lady Berkeley, that intimated, that except they had a great care of their daughter, and a strict eye over her, she and her father should not long enjoy her company. My lady Berkeley shews this letter to my lord Grey, says he, Madam, this is no more than what I have often told you, I have given you some intimations already, and my thoughts and advice about it; and whoever it be that writ this letter, I am afraid her apprehensions of some ill usage may put her upon some such design. And he repeated it again, Madam, let me caution and advise you, have her always in your eye, and lock her up safe at night. This was repeated over and over, to my lady Lucy, and my lady Arabella. Thus it continued till Saturday, my lord Grey resolved to go to his country-house at Up-Park, and took his leave of my lord Berkeley and his family accordingly, and went that night to Guildford, and there he lay, and rose the next morning to go onwards of his journey, but was pursued, it seems, by my lady Lucy. For she tells you, when this young lady had left her father's family, she immediately on the Sunday morning came to Guildford, and sent after my lord, who was newly gone on his way, and was found on his way to his house in Sussex. Having received my lady Lucy's commands, he returns to Guildford, and there he had the first notice given him of my lady Harriett's escape; says he to my lady Lucy, this is no more than I have fairly warned you of before; had you taken my counsel. Was she locked up? No, said she, she is gone away, and your lordship must needs know where she is, and therefore pray get her to return home again. Says my lord Grey, I assure you I know nothing at all of it, and to give you all the satisfaction I can in the world, I did not only warn you of it before, but I shall be as industrious as any of you all, you shall find, to recover her again. For that purpose, I will see if she have crossed the river, or is gone any other way; and if I can make any discovery, by letter or any other way, I will send you word immediately; and I am so sincere with you, that if any letter come to your family for me, I give free liberty to my lord and all his family to open them themselves, and see what is in them; and if I do receive any from her any other way, a true copy of it shall be sent; and more than all this, if my lord be not satisfied with what I have said, let my lord or my lady send, and set what spy upon me and my actions they please. And it seems he was taken at his word, and they made choice of a very proper gentleman, and you heard what discoveries he has made, and how he has worded the matter. For first he makes my lord Grey at one time a very subtle lover, full of all intrigues, and one that could conceal all within himself; and yet (when it would do him so much injury) so open, as absolutely to unbosom himself to one that was an absolute spy upon him and his actions, and tell him such things, as no man in the world sure is such a fool as to tell another in his circumstances. But that I leave to the jury (as my lord Cavendish has said) to consider of the impertinency of his long

story. When he had parted from my lady Lucy, he comes to London, and useth all the diligence he could to find her out. On Wednesday again he leaves London, when he could not find her, and goeth to his own house: Upon Thursday this gentleman Mr. Craven comes thither to him. There he finds a letter from my lady Harriett, and because he would be exact to his word, he keeps a copy of the letter, and sends the original of it to my lord Berkeley's. Now no man will imagine, if he had such an intrigue with this lady, as they would make the world believe, that he would ever have sent such a letter out of his custody, which would have been a colourable excuse for him. Nay, we do not rest here, but by the way we produce this letter to this gentleman, who it seems, was our guardian, and told him moreover, here is my answer to this letter, and sends a copy of his answer with the letter from her to my lady Berkeley. Then there comes a second letter, and he, according to his word, discovers that, and there is not one circumstance in all his carriage that doth accuse him. After this second letter was imparted to my lord Berkeley's family, he continued a while at Sussex, and afterwards, when he returned to London, he used all the means imaginable, for a person that was so near concerned in point of relation, and in regard of his own reputation, to have found her out, but could not. These are the circumstances of my lord Grey's particular interest in this matter, and when we have made out these circumstances, we hope the world will believe him not guilty. It seems the young lady is now in court; she is so just, it seems, as to come to do my lord right, and that one thing will knock all their conjectures on the head; for she best knows what has been done, and the jury will consider whether this be imaginable, that my lord Grey should conceal her all this while, and produce her now, when if any violence hath been offered her she may freely tell it. And as for the man that could tell so very readily this was the very lady that came to his house, when she had so hooded and muffled up herself, we must leave him and his credit to the jury. We shall therefore desire, when we come to the close of our evidence, that this young lady may be here examined upon her oath, and then, I hope, the truth will come out.

Mr. *Thompson*. My lord, because your lordship seems to be somewhat satisfied that there is a direct proof of the matter charged against my lord Grey, therefore I suppose it will not be amiss to open the fact, and in three words to state the charge, and the nature of their evidence to maintain it.—

L. C. J. Come, come, call your witnesses and make out your defence.

Just. *Dolben*. If you can prove what Mr. Williams says, you do something, but do not think to make long speeches; go on to the evidence.

L. C. J. Pray, Mr. Thompson, do not you believe we want any of your help to recollect the evidence given, or to direct the jury about it, do you disprove it if you can.

Mr. *Thompson*. My lord, the course of practice I always took to be so, to open and observe upon the evidence given, and then answer it. But I submit to your lordship for that; you may do as you please.

Lord *Grey*. Then, my lord, I desire I may speak something myself. Certainly, my lord, no man ever lay under a more infamous accusation, than I now do; and therefore, I hope, your lordship will pardon me, if I defend myself as well as I can from it; and undoubtedly, if in any case a man be allowed to speak for himself, it must be allowed to me in this. My honour lies here at stake, and if my life did so too, I am not, nor should be more concerned to save that, than I am to clear my reputation, which is and ought to be very dear to me. My lord, were I guilty of the villainies that here are laid to my charge, I certainly should need no other punishment, I am sure, I could not have a worse, than the reflections of my own conscience for them, and I ought to be banished the society of mankind. My lord, I must confess, I have been so unhappy, (though it is more than they could else prove) as to have a very great kindness for this unfortunate young lady, my lady Harriett Berkeley: but yet, not so criminal a one as the witnesses that have been produced would have you to believe, nor as the information would insinuate. I do here protest, I was no way assisting to her escape, nor privy to it; nor have I ever at all since detained her from her father, though I have suffered a fortnight's close confinement and imprisonment for it; and all this I doubt not to make out to your lordship's and the jury's satisfaction. I shall say no more of the justice of my cause, but endeavour to prove it; and, my lord, this is that which I say to it. The evidence that has been given consists most of such and such discourses that have been between the witnesses and myself, and those I shall give what answer is fit to be given to them. A negative, as your lordship very well knows, is not to be proved. Particular discourses we have had, of the same nature as Mr. Williams has opened, about my cautioning them concerning her attempts to go away; and I shall appeal to my lady Berkeley herself, whether that be not so. If my lady Berkeley own it to be true, I hope that is very good proof. My lord, about the time that they speak of, concerning the letter which I take to be in June or July, I was sent for by my lady Berkeley into her chamber; when I came there, my lady told me there was a letter, which, she said, was designed to go from her daughter to me. I asked her, if she had read the contents of the letter, she said no. I asked her, whether the direction of the letter were to me, she could not tell that. But my lady had told me, her daughter had given her the account of what had passed between us, that she was satisfied there was a correspondence of love between us.

To remove all fears, I proffered to absent myself. I desire my lady may answer whether this be not so.

L. C. J. That will be to intricate the business, to go on thus. Pray, my lord, if you will ask any question of any body, tell them your counsel, and let them ask them, but to make long discourses all day is not to be permitted.

Lord Grey. My lord, I will ask then my questions all together by and by. My lady Berkeley going down with my lord to Durdants, desired that my wife might go down with her, to which I readily consented. Soon after that, I fell sick and kept my bed a while. When I was well again, and going into Sussex, I sent for my wife to town, and would not go fetch her, because I would keep my word with her ladyship. My lady Berkeley thereupon wrote me a letter, wherein she thanked me for not coming according to my promise, and commended my modesty in it; and said, there would be no apprehension of any ill from me, if I did come thither for a short time. And thereupon being invited by her ladyship, to take her house in my way to Sussex, I did come down thither. And I urge this, to shew that there was no conspiracy or design of any such thing in me, for I had not gone to Durdants, if I had not been sent for, and so there was no design in my going. When I came thither it was the Tuesday, and on the Thursday my lady Berkeley did acquaint me, she was under great apprehensions and fears; and I asked her the reason of it. She told me, That she had been at some ease, her daughter having made a great submission to her, and promise of constant obedience, and that she would do all as she would have her, if she would but give her leave to go to town with her; but yet, for all this, one morning she puts on her hoods and scarfs, and was going away, and had done it, but that the French woman and another prevented it. I told my lady Berkeley then, Madam, said I, I have good reason to believe she may have some such intention. I did not give my reason at that time, but I shall by and by. But, said I, if she do go away, I cannot imagine but that it is possible she may send to me, and I will give your ladyship notice as soon as ever I know; and though you seem to be satisfied, and to think your daughter secure here, yet you do not think her so indeed; and you must needs use her ill, or she would have no thoughts of going from you. For my part, if she do go away and come to me, I will shun it as I would death, and you have now fair warning; she is all day in your eye, pray be sure to lock her up safe at night. Upon Friday following comes a letter without a name to it, and Mr. Williams has opened to you the contents of the letter. She read the letter when her daughter was in the room, who asked what the letter was, and being denied to have any account of it, was in the greatest confusion in the world, and leaped and run down stairs like a mad thing, and my lady herself was very much disturbed at it. When I saw the letter, madam, said I, this letter ought to confirm you in the resolution of taking my advice; it can come from nobody, but some one that is to assist in the executing of this design, but thinks it too dangerous to engage in, and gives you this warning to prevent it. You have sufficient caution given you to make you careful. Whereas, my lord, if I had been in any sort of conspiracy of that nature, to take her away, my lady Berkeley certainly should have been the last woman in the world that I would have communicated it to. My lord, I went away from Durdants on the Saturday, and so to Guildford, where I lay that night, and went on my journey the next morning, but was overtaken on the road, by a messenger from lady Lucy, who was come to Guilford to speak with me; when I came back to her, she told me, my lady Harriett was gone away that night, and they did believe I knew where she was. Said I, Madam, I have as great a share in this misfortune as any of you all, because of your supicion; but sure you must have used her very ill and make her do this; and you are much to blame, when you had all that warning from me; why did you not secure her, and lock her up as I advised you? Said she, She was locked up, but the key was left in the door. Upon this I went to London, and I had appointed my lady Lucy to meet her on Monday morning, to give an account what I could learn; but I told her, that I had heard nothing of her, nor is there any proof that I did see her at any time, till I owned it before your lordship at your chamber. She seemed not to believe me when I told her so. Madam, said I, it is certainly true; and to convince you that I have no hand in this matter, I will go immediately into Sussex, and there I will stay as long as you will have me; and if you please to go yourself with me, or send any body else, to observe what I do. She thought it not fit for herself to go with me: but my lady Berkeley and she afterwards pitched upon Mr. Craven, who had been a long time a servant in the family, and I agreed with my lady in that, to have him, and receive him as a spy upon me. Discoursing with my lady Lucy, said I, Madam, now I will tell you the reason, which I forbore to tell my lady Berkeley, why I had good ground to suspect my lady Harriett had a design to go away, and it was this: My lady Harriett came to me one day, about six weeks or more ago, in the court-yard at St. John's, and says she to me, I am used like a dog, I live the life of a slave here, I can endure it no longer; by the eternal God that made me, I will not be alive long, unless I can set myself at liberty. This I said to my lady Lucy; and these, said I, were reasons enough for me to warn you to look well after her. I did, according to agreement, go into Sussex immediately; and I then told my lady Lucy, I believed I might have a letter from my lady Harriett, by the Wednesday night's post, because, said I, she cannot write sooner than that, and if

I have, I will send you word. When I was there, Mr. Craven came the next day to my house; and as soon as he came, said I, Here is a letter I have received from my lady Harriett, and if you will, you may take a copy of it. I took a copy of it myself, and sent the original of it to my lady Lucy, though they have not thought fit to produce the letter now in court, that your lordship and the jury might see it. But here is mine, which is the first account what was become of her after she went away, that I received, except what account I had from my lady Lucy at Guilford; and this will shew to all the world, that I was not so much privy to her going away, as they say I was. I had denied to assist her in it, when she complained to me of her ill usage; and when she attempted to go away before, I, upon my lady's telling me of it, gave her sufficient caution. And for the truth of all this, I appeal to those very witnesses that have been produced against me. When I had shewn this letter to Mr. Craven, I sent it away by a servant of my own, to my lord Berkeley's, and writ to my lady Lucy, and desired her to pen whatever answer she should think fit to send. My lady Lucy did write to me back again, and told me the substance of what I was to write, but the penning of it she did leave to me, for she believed I would do it effectually. I did write an answer to my lady Harriett's letter, and that answer I shewed to Mr. Craven, and asked him if it were sufficient, and he seemed to approve of it. The lady herself is in court, I know not whether she can give an account of the letter, I suppose she can tell you what an one it was. I had afterwards another letter from her in answer to mine, and that I have here, and it will appear by both of those letters, whether I had any interest in her going away. Though perhaps that would not have been such a crime neither; and yet I think withal, that there is not a tittle of proof that I had any hand in it, not one proof of any circumstance like it. And if there be any crime, it must be the taking her away, to such an intent and purpose as is charged in the information. Before I came to town, I was sent for about some other business, yet I would not come till I had my lady's consent; for I sent her word, my lady Harriett writ in her letter, that she was going beyond sea, and if I went to London I might prevent it, but I would not go without my lady's or Mr. Craven's consent and approbation. When I came to town, I was one day at the coffee house in Covent-Garden, I was then sent to by this lady, who was in an hackney-coach at the door, and when I came to the coach side to her, she gave me a tedious history of her ill-usage at home, which made her come away. And when your lordship's warrants were out to search for her, I came up to your lordship, and I dare appeal to your lordship, whether I did not acquaint you, that she only sought for protection, and was willing to return home, so she should be satisfied she should not be ill treated again. You then told me, I could not protect her against her father. I then told your lordship and my lady Berkeley, She was not in my house, nor in my custody. They replied, She was in my power; but how could she be in my power, when she was not in my custody, nor in my lodging? But my crime was that I knew where she was, And if I do deserve punishment for keeping my word and faith with her, which I gave her in a letter, upon her importunity not to betray her, I must submit to it, I could not in honour do otherwise. My lord, I desire this first letter may be read, which was first sent by my lady Harriett to me.

L. C. J. Surely, my lord, for all your long discourse you cannot but apprehend yourself mistaken, when you say there is no crime charged in the information, but the taking her away to such an intent and purpose. Surely there are other things besides that. And what you speak, if not proved, your lordship knows must pass for nothing.

Mr. *Williams.* My lord, your lordship has made a right distinction between discourses and proofs. Therefore discourses between strangers and third persons, are not to be stood upon, but the proofs are; and all the evidence together must be left to the jury, to consider what is material and pertinent, and what not. We shall therefore go on to our evidence; and shall begin with my lady Berkeley first, and ask her ladyship some questions. And we desire to know whether she hath seen this letter?

L. C. J. But take notice, the letter you propose, we cannot read it.

Mr. *Williams.* But, my lord, it was agreed between my lady Lucy and my lord Grey, that if he received any letters from my lady Harriett, he should communicate them to my lady Berkeley, and this letter coming to him, he first shews it to Craven, the man that was thus set as a spy upon him, and after sent it to my lady Lucy, and whatsoever answer they would have sent, was promised should be, and accordingly was first shewn to Craven, and then sent. If this were the agreement, and these letters were thus written, then sure we may read them.

L. C. J. You may ask my lady Berkeley any questions, but must not read any such letters.

Serj. *J. J.* Pray, Mr. Williams, let us go according to the course of law, and give no evidence, but what is fit to be given as evidence.

Mr. *Williams.* Then thus, Madam, pray can you remember the discourse that past between my lord Grey and your ladyship in June, concerning your daughter and him?

Lady *Berkeley.* Where?

Mr. *Williams.* At St. John's.

Lady *Berkeley.* I do not well know what discourse you mean; but any particular discourse that was there I will answer to.

Mr. *Williams.* That discourse that past between you the first time that you acquainted my

lord Grey that you suspected there was too much familiarity between him and your daughter.

Lady *Berkeley.* The first time do you say?

Mr. *Williams.* Yes, Madam; I think you were pleased to say, that upon your first discovery, you sent for him and talked with him.

Lady *Berkeley.* I did not say upon my first discovery, but when I had discovered it. For I would be very punctual to the truth in my evidence.

Mr. *Williams.* You say, your ladyship had some discourse with him in June.

Lady *Berkeley.* I think it was in June.

Mr. *Williams.* Pray, Madam, can you remember what my lord Grey promised your ladyship then?

Lady *Berkeley.* He told me then, he would obey me in any thing, even if I would banish him my house.

Mr. *Williams.* Was there any letter then produced by your ladyship or my lord Grey?

Lady *Berkeley.* Of what concern?

Mr. *Williams.* Any letter that related to your daughter?

Lady *Berkeley.* No; but I told him of a letter that was found, that she had writ to him.

Mr. *Williams.* Madam, pray have you that letter, or any copy of it?

Lady *Berkeley.* No, it was torn to pieces, I can bring the pieces, I believe, if there were occasion.

Mr. *Thompson.* Your ladyship read it, I suppose?

Lady *Berkeley.* No, my daughter Bell read it, and tore it in pieces.

Mr. *Williams.* Was there any discourse between your ladyship and my lord Grey, about any other letter?

Lady *Berkeley.* Not at that time.

Mr. *Williams.* Was there at any other time?

Lady *Berkeley.* Yes, at the Charter-house at my lord's house, one day my lord Grey desired me to walk into the gallery, for he had something to communicate to me, and the discourse that past between us then was this; he shewed me there a letter of the passionate love he had for her, with some good counsel in it.

Mr. *Williams.* Did your ladyship approve of the counsel he gave her?

Lady *Berkeley.* Never, when there was so much love and passion in the letter.

Mr. *Williams.* Pray, Madam, recollect yourself, were you not pleased to like of that letter?

Lady *Berkeley.* I could never like of the passionate expressions in it; there might be something in it well said enough, but with the greatest expressions of passion and love; insomuch, that he himself said of it, madam, I'm ashamed of that part, and would have had me overlooked it.

Mr. *Williams.* Did your ladyship say, her father could not give her better advice?

Lady *Berkeley.* Not that I know of.

Mr. *Thompson.* Pray, Madam, did you ever say so?

Lady *Berkeley.* Surely I did not: For I could not but think he could give her a great deal better advice.

Mr. *Williams.* Does your ladyship, pray Madam, remember any discourse between my lord Grey, and you, upon the Thursday before your daughter went away?

Lady *Berkeley.* I cannot tell for Thursday.

Mr. *Williams.* Does your ladyship remember the letter you received from an unknown hand?—Lady *Berkeley.* Yes, I do.

Mr. *Williams.* Did you shew that letter, or read it to my lord Grey?

Lady *Berkeley.* My lord Grey came up to me, and seemed to be very careful of my concerns; Madam, said he, Pray take care, for I saw a letter directed to your ladyship, without the mark of the post, or the penny-post upon it. And, said he, I give you this caution about it before it comes to you. Because my lord was by, I arose up and went to the other side of the room, and my lord Grey followed me, and when I took up the letter, I saw something that I thought to be very odd and unusual in his carriage, as if he were in great disorder, as I was; and I went to my chamber, thither my lord Grey followed me, and that letter he would see, because he said, it had put me in some disorder: I told him he should not see it as then. I sent for my daughter Lucy into my closet, and shewed it her, and she was in great disorder about it too.

Mr. *Williams.* Pray, Madam, can you remember whether that letter did caution you to look well to your daughter, or else you were not like to have her company long?

Lady *Berkeley.* The letter did say some such thing, I must look after my daughter, or I should lose her.

Mr. *Thompson.* And this was on the Friday before she left your ladyship, Madam, was it not?

Lady *Berkeley.* Yes, it was so, I think.

Mr. *Williams.* Pray, Madam, what did my lord Grey say upon that?

Lady *Berkeley.* He was extremely earnest to see the letter, because, he said, it had so disordered me; and at last I was persuaded to let him see the letter; he turned the letter upside down, and looked on the subscription. Madam, says he, is this all that disorders you so much, I am used to have many such letters by the penny-post; this is nothing but to amuse you. It is a very silly letter, and written by some woman, as you may see by the spelling.

Mr. *Williams.* Did he caution you to lock up your daughter at nights to secure her?

Lady *Berkeley.* Not one word upon this letter; but the next morning again talking about this letter, he said, It was a foolish letter, and what should I trouble myself about it for?

Mr. *Williams.* But, Madam, had you any caution given you by my lord Grey about this time, to take care of your daughter?

Lady *Berkeley.* Not that I remember, to lock her up.

Mr. *Williams.* What then did he say?

Lady *Berkeley*. I will tell you what he said to me once or twice. Madam, whatever you do, do not make her desperate. I asked him what he meant by that word? Said he, It is not necessary to explain that word to you; I meant nothing, but do not use her ill. Now, my lord, I was so far from that, that I used her with all the tenderness of a mother, like a sister rather than a daughter; nay, he himself has confessed, she was better used than he imagined she was.

Mr. *Williams*. Did your ladyship, at any time, intimate to my lord Grey, that you had any apprehensions of her intending to go away?

Lady *Berkeley*. I did tell him, That when I was at London, my woman that lay with her, did rise about 8 o'clock, and left my daughter alone in the room, and when she came up again, my daughter had put on her hood and scarf, and her petticoat was pinned up, as ready to go out, and the woman being affrighted at this, called up my other daughter, and so prevented it; and after came and told me she had pinned up her petticoat thus about her, and she did not know what she meant to do. Upon this I went to my daughter, and, said I, What is the reason that you pinned up your petticoat, and put on your hood and scarf? Says she, I had not my scarf on. But says my woman to me, when I came into the room, you thrust something into your gown. It is true, I did so, Madam, said she, but it was upon the account, I had got a sheet of paper, upon which I intended to write, and seeing her come in, I put it in my gown.

Mr. *Williams*. Pray, Madam, did my lord Grey at any time caution your ladyship about your daughter, to lock her up, or tell you his opinion that he thought she would leave you?

Lady *Berkeley*. I cannot positively say that; but he used to say to me, Madam, do not make her desperate; I do not know that ever he advised me, as to the locking her up.

Mr. *Thompson*. Did he desire you, Madam, to take care that she did not go away from you?—Lady *Berkeley*. I do not remember it.

Mr. *Williams*. Pray, Madam, can you tell who brought that letter from an unknown hand to you at Durdants?

Lady *Berkeley*. It came down with other letters to my lord's steward.

Serj. *Jeff*. But your ladyship says my lord Grey was very solicitous about that letter.

Lady *Berkeley*. Yes, Sir, he came to me, and very earnestly cautioned me about it: for, said he, I see there is neither the general-post nor the penny-post mark upon it. And knowing himself guilty of what he was guilty of, he might be afraid lest my lord should see it, and so his business come out.

Mr. *Williams*. Pray, my lady Lucy, do you remember that ever my lord Grey advised the locking her up?

Lady *Lucy*. Upon discoursing of the letter that came from an unknown hand, my mother said to my lord Grey, sure that is such a horrid thing that it can never be done; my lord Grey might then reply and say, if you fear it, you may lock her up: but I do deny that ever I heard him say any thing to caution my mother, that he thought she was going.

Mr. *Williams*. Madam, the question I ask your ladyship is, whether my lord Grey did or no direct or advise to lock her up?

Lady *Lucy*. Upon my mother's discourse concerning the unknown letter, and how sad a thing that would be, he might say, that if she feared that, she might lock her up; but he never did say that he did think she would go.

Mr. *Thompson*. Pray when was this, Madam, how long before she left the family?

Lady *Lucy*. The day before.

Mr *Williams*. Then, Madam, for the discourse you had with him at Guildford, what said he, he would do?

Lady *Lucy*. It was at London, that he passed his word to go down into the country.

Mr. *Williams*. What did he promise you to do there, Madam?

Lady *Lucy*. He said he would not stir from Up-Park till he heard from my father.

Mr. *Williams*. What did my lord say to you, Madam, about the letters he should receive?

Lady *Lucy*. He did say he would send us all the letters that came to him from her, and if any came to our hands we were to open them.

Mr. *Williams*. Was my lord Grey willing to receive a spy, Madam, upon him?

Lady *Lucy*. Yes, he was.

Mr. *Williams*. Was there any letter sent to your ladyship from my lord Grey?

Lady *Lucy*. Yes, there was a letter with one in it from my lady Harriett.

Mr. *Williams*. Have you those letters by you, Madam?

Lady *Lucy*. No, I have neither of them here.

Mr. *Williams*. Can you tell the contents of it?

Lady *Lucy*. I have told them already.

Mr. *Williams*. Pray, Madam, will you please to recollect yourself a little, when you were at Guilford, and told my lord Grey that my lady Harriett was gone away, did not my lord tell you, you had not observed the directions and advice he gave about her, to lock her up; and did not you then answer him, yes, the door was locked, but the key was left in?

Lady *Lucy*. I did reply, the woman had not locked it carefully enough after her.

Mr. *Williams*. Did you not say, that the door was locked, but the key was left in?

Lady *Lucy*. I do not remember a word of that.

Mr. *Williams*. Madam, will you please to cast your eye upon that letter, and see if that paper be a true copy of the letter you had?

L. C. J. What paper is that you offer, Mr. Williams?

Mr. *Williams*. It is a letter from the young lady to my lord Grey.

L. C. J. You know no use can be made of that paper, why do you offer it? It is contend-

ed that my lord had the lady in his power, and then would not she write any thing?

Mr. *Williams.* Then, my lord, there is the young lady herself, we desire she may be examined.

Serj. *Jefferies.* But before we part with my lady Lucy, if you have done, we desire to ask her a question; It is here insinuated, as if there had been some hardship put upon this young lady, or some ill usage in her father's family: Now for the honour of that noble family: I would have that point cleared; and therefore pray Madam, did you ever observe any unkindness, any severity or harsh usage, that was used to this lady, by my lord or my lady at any time?

Lady *Lucy.* So far from that, that all of us had a jealousy that she was loved best.

Serj. *Jefferies.* Pray take notice of that, gentlemen.

L. C. J. Pray, Madam, let me ask you one question. After my lady had discovered this evil affection between my lord Grey and this young lady, did she then put any indecent severities upon her, or use her very hardly?

Lady *Lucy.* My lord, I came out of France but two days before she went away. I saw no such thing.

Mr. *Williams.* We ask her about my lord Grey, and you ask her about a third person.

Serj. *Jefferies.* Oh good Mr. Williams, we know why we ask her that question. It is an extraordinary case. Pray my lady Arabella, will you answer the same question?

L. C. J. Ay, Madam, pray let me ask you; after this ill business between my lord and her was discovered, did my lady Berkeley, (I cannot say my lord, for he knew nothing of the matter till she was gone away) use her ill or unkindly?

Lady *Arabella.* No, no, my lord; no mother in the world could be more indulgent and kind. She did indeed find it necessary to have a stricter eye over her, and she did put a woman about her to look after her, and did not permit her to write any letters. She had, or expressed a greater kindness for her, than any of us all besides.

Lady *Berkeley.* Ay, and that my lord Grey knows to be true.

L. C. J. No, no, when my lord Grey was in his passion, he might say so, but he has no proof to shew of it.

Serj. *Jefferies.* My lady Lucy and my lady Arabella, what person did you fear should take her away, pray?

Lady *Arabella.* We were not afraid of any body but my lord Grey.

Lady *Lucy.* There was no reason for fear of any body but him.

Mr. *Williams.* My lord, there is the young lady, we desire she may be sworn.

Att. Gen. We oppose it, Sir, and have very good reason so to do, and we think it is time to do it now, if ever.

L. C. J. Why should she not be sworn, Mr. Attorney?

Just. *Dolben.* If the lady herself have the confidence to be sworn, I see no reason why she should not.

Att. Gen. This case, my lord, is in the nature of a ravishment of ward, for it is for taking a young lady out of the tuition and custody of her father, who is her guardian by nature, and it is apparent in the proofs, she is highly criminal in this very matter herself, in consenting to go away in such a manner, and to such an evil purpose; and now she comes to excuse one, that is not only a partaker in her fault, but the first seducer. Now, my lord, when we have proved this matter of love upon her, that is laid in the information, sure she cannot be a witness for them, she would be a witness to excuse herself.

L. C. J. Mr. Attorney, I do think truly, that notwithstanding what you say, she may be a witness, being no party to the information. But withal, I think there is very little credit to be given to what she says.

Mr. *Williams.* Sure these gentlemen forget themselves much in offering to hinder or oppose one's being a witness, that is no party in the cause.

Mr. Serj. *Jefferies.* Truly, my lord, we would prevent perjury if we could. [Then she was sworn.]

L. C. J. Brother Jefferies, we cannot oppose it, if they will press it, and she consent; but I tell you what I think of it.

Mr. *Williams.* If she be sworn, my lord, we would ask her a question or two. Madam, we would desire your ladyship to answer whether my lord Grey had any hand in your escape?

Lady *Henrietta.* No, Sir.

Just. *Dolben.* You are upon your oath, Madam; have a care what you say; consider with yourself.

Lady *Henrietta.* Yes, I know I am upon my oath, and I do upon my oath say it.

Mr. *Williams.* Did my lord Grey advise you to it?

Lady *Henrietta.* No, I had no advice from him, nor any body about him, nor did he know any thing of it, it was all my own design.

Serj. *Jefferies.* Madam, I would ask you this question, and pray consider well before you answer it. Did you see my lord Grey on the Sunday after you went away from your father's?—Lady *Henrietta.* No, I did not.

Serj. *Jefferies.* Did you see him on Monday?

Lady *Henrietta.* No,

Serj. *Jefferies.* Did you on Tuesday?

Lady *Henrietta.* No.

Serj. *Jefferies.* Did you on Wednesday?

Lady *Henrietta.* No.

Serj. *Jefferies.* Good God! Pray, Madam, how long afterwards was it that you saw him?

Lady *Henrietta.* Sir, it was a great while after.

Mr. *Williams.* How many days or weeks after was it?

Lady *Henrietta.* Sir, I cannot tell.

Serj. *Jefferies.* As near as you can, Madam, when was it?

Lady *Henrietta.* I can remember the first place that I saw him at after, but the time exactly I cannot.

Mr. *Williams.* Where was that, Madam?

Lady *Henrietta.* It was in a hackney-coach.

Mr. *Williams.* That was the time, I suppose, that you sent for him out of the coffee-house in Covent-Garden?

Lady *Henrietta.* Yes, I did so.

Mr. *Williams.* Pray, Madam, did you write any letter to my lord Grey after your going away?

Lady *Henrietta.* Yes, I did by the next post.

Mr. *Williams.* When did you write that letter, Madam?

Lady *Henrietta.* I did write it upon the Tuesday after I came away. I hope that is no offence.

L. C. J. No? Is it not? You should have writ to somebody else sure.

Lady *Henrietta.* I thought him the fittest person for me to write to, and I did not imagine it would be any ways scandalous for him, he being the nearest relation I had in the world, except my own brother, that could protect me.

Mr. *Williams.* Had you any answer from my lord Grey to that matter, Madam?

Lady *Henrietta.* Yes; and a very harsh letter it was.

Mr. *Williams.* Did you write him any other letter?

Lady *Henrietta.* Yes; but I received no answer of it at all.

Mr. *Thompson.* Pray, Madam, did my lord Grey, at any time, persuade you to return to your father's?

Lady *Henrietta.* Yes, he did so several times.

Serj. *Jefferies.* Pray, Madam, do you know Charnock, that was my lord Grey's gentleman?

Lady *Henrietta.* Yes, I do.

Serj. *Jefferies.* Upon your oath, did not he carry you away from Durdants?

Lady *Henrietta.* No.

Serj. *Jefferies.* Nor did not his wife assist you in it?—Lady *Henrietta.* No.

Serj. *Jefferies.* Nor was she not with you on the Sunday morning?

Lady *Henrietta.* No, nor was not with me.

Att. Gen. Were you not at Mrs. Hilton's then, Madam?—Lady *Henrietta.* No.

Att. Gen. Were you at Pattens?

Lady *Henrietta.* No.

Sol. Gen. Nor at Jones's?

Lady *Henrietta.* No, nor at Jones's upon my oath.

Att. Gen. Pray, who did come with you from Durdants?

Lady *Henrietta.* I shall not give any account of that, for I will not betray any body for their kindness to me.

Mr. *Wallop.* If it be no body in the information, she is not bound to tell who it was.

Lady *Henrietta.* If I have vowed to them before, not to discover, I will not break my vow to them.

Just. *Dolben.* If they ask you of any body in the information, you have heard their names, you must tell if it were any of them, but you are not bound to tell if it were any one else.

Lady *Henrietta.* No, it was none of them. I went away upon another account.

L. C. J. If you have no further questions to ask her, pray, Madam, sit down again.

Lady *Henrietta.* Will you not give me leave to tell the reason why I left my father's house?

Just. *Dolben.* If they will ask you it they may. You are their witness.

Mr. *Williams.* No, my lord, we do not think fit to ask her any such question; she acquits us, and that is enough.

Lady *Henrietta.* But I desire to tell it myself.

L. C. J. Truly, I see no reason to permit it, except we saw you were a more indifferent person to give evidence than we find you.

Lady *Henrietta.* Will you not give me leave to speak for myself?

Just. *Dolben.* My lord; let her speak what she has a mind to, the jury are gentlemen of discretion enough, to regard it no more than they ought. But, madam, for God's sake consider you are upon your oath; and do not add wilful perjury to your other faults.

Lady *Henrietta.* I have been very much reflected upon here to-day, and my reputation suffers much by the censure of the world, and therefore—

L. C. J. You have injured your own reputation, and prostituted both your body and your honour, and are not to be believed.

Justice *Jones.* You are, madam, to answer only such questions as are asked you pertinent to the issue that the jury are to try, and if the counsel will ask you no questions, you are not to tell any story of yourself.

Mr. *Ireton.* My lord, as to the evidence of Patten, the case is quite otherwise than they would represent it to be, about Charnock's coming thither for lodgings, for Mrs. Patten is a midwife, and used to lay Mrs. Charnock, and it was for her to lye-in at Patten's house, because it would be inconvenient to lye-in at my lord Grey's.

L. C. J. What does that signify? but prove what you can.

Mr. *Thompson.* Where is Mrs. Patten, they would not produce her, because they knew it was against them? [She appearing was sworn.]

L. C. J. Well, what do you ask of this woman now?

Mr. *Ireton.* I would ask her, my lord, whether were there any lodgings bespoke in your house against September?

Mrs. *Patten.* I know nothing of that.

Mr. *Ireton.* Was there any body in June or July at your house to bespeak lodgings?

Mrs. *Patten.* I cannot tell the month nor the day.

Mr. *Thompson.* Pray, mistress, speak what you do know.

Mrs. *Patten.* Mr. Charnock and his wife did come to my house last summer.

Mr. *Williams.* What was their business?

Mrs. *Patten.* For lodgings.

Mr. *Thompson.* Did they tell you who they were for? Did they talk about lying-in?

Mrs. *Patten.* They were only for his wife.

Mr. *Ireton.* Did he tell you what time he should come?

Mrs. *Patten.* He did tell me they were not fit to come into yet, but they might at such a time, but she did not know her own reckoning: But they were not taken.

Mr. *Ireton.* Are not you a midwife?

Mrs. *Patten.* I was Mrs. Charnock's.

L. C. J. What is that to this purpose?

Serj. *Jeff.* Now you are sweetly brought to bed.

Mr. *Ireton.* Pray, woman, will you tell what they said to you?

Mrs. *Patten.* Mr. Charnock and his wife came to our house for lodgings. I asked her who they were for; she said they were for a gentlewoman. I asked her who she was. Says she, for myself to lye-in here. Said I, how comes that about? Says she, about the time that I reckon my lord's family will be in town, and I find it not convenient to lye-in at our own house; then my father and mother have sent for me into the country, to lye-in there, but I cannot think of going thither, because of changing my midwife. Then, said I, truly, Mrs. Charnock, any thing in my house is at your service. Said she, I think it convenient rather to be here than to go into the country; but I do not desire that my lord's family should know that I intend to lye-in here, for I would not inconvenience my lady's house, and yet my lady, it may be, will not permit me to go out.

L. C. J. But, mistress, there came one to your house from Mrs. Hilton's, who was that?

Mrs. *Patten.* I do not know; I was not at home then.

L. C. J. Did you not come home before they went away?

Mrs. *Patten.* No, Sir.

Serj. *Jeff.* Was that woman they brought to lye-in in your house, mistress?

Mrs. *Patten.* Who do you mean, Sir?

Serj. *Jeff.* The other gentlewoman that came with Mrs. Charnock and Mrs. Hilton. The lady that spoke just now.

Mrs. *Patten.* I do not know; I never saw her face in my life, that I know of; what my husband saw I cannot tell, I saw her not; it may be she, it may be not, for any thing I know.

L. C. J. Well, gentlemen, have you done, will you call any more witnesses?

Mr. *Williams.* We have done, unless they call any more.

Serj. *Jeff.* We shall only call a noble lord, my lord of Aylesbury, to testify what he knows, being very much conversant in the family, of the treatment he has observed of this lady.

L. C. J. That needs not, for there is nobody that fixeth any thing of the matter upon my lord or my lady.

Mr. *Wallop.* We do hope in your lordship's observations upon the evidence to the jury, you will please to take notice, that there is no colour of evidence of any actual force upon the lady which is laid in the information, that my lord did *vi et armis abducere*, &c.

L. C. J. Oh, Mr. Wallop, fear not, I shall observe right to the jury; but you have read the book that is written concerning juries lately, I perceive.

Serj. *Jeff.* He has studied such books no doubt, and has learned very good counsel from Whitacre.

L. C. J. Look you, gentlemen of the jury, here is an information on the behalf of the king, against my lord Grey, and the other defendants; and it doth set forth, that my lord Grey having married one of the daughters of the earl of Berkeley, and having opportunity thereby of coming to the earl of Berkeley's house, he did unlawfully solicit the lady Henrietta, another daughter of the earl of Berkeley's, a young lady, to unlawful love; and that he did entice her from her father's house; and that he did cause her to be conveyed away from thence against her father's consent; and that he did unlawfully use her company afterwards in a very ill manner, an unjustifiable manner; and this, gentlemen, is the substance of the information; in truth, it is laid, that he did live in fornication with her. Now, gentlemen, to this, my lord Grey, and the other persons, the Charnocks and the Jones's have all pleaded not guilty to it. Now then, the question before you is, whether there were any such unlawful solicitation of this lady's love; and whether there was any inveiglement of her to withdraw herself and run away from her father's house without his consent; and whether my lord Grey did at any time frequent her company afterwards. Gentlemen, the evidence that has been given, you have heard what it is, and it is very plain, if you do believe these witnesses that speak it from my lord's own mouth) that he hath a long time unlawfully solicited her to lust. For there is nothing else in it, gentlemen, (that is the plain English of it all) he has enticed her to unlawful lust. My lady she gives evidence of it from his own mouth, that there was an intrigue of unlawful love between them: She says my lord Grey condemned himself for it several times, but yet prosecuted it, he owned it was a most disingenuous and dishonourable thing in him, which indeed it was; he did therein in truth make a right estimate of the thing. He did own he had betrayed the family, and brought it into great scandal, and had abused both father and mother by this unlawful solicitation of their daughter to this unworthy wicked affection; but he excused it all with the greatness of his passion, and that was all; he prayed her to consider, it was a great and passionate love, a love that he could not resist; he loved her above all

women living, and many fair promises of amendment and desisting he made, but you see how he has performed them. You hear my lady Arabella tells you there was a letter written by my lady Harriett, this lady that appears now in court as a witness for my lord Grey, which she had out of her own hand, and she tells you the effect of it; it was to invite my lord another night, as he had been with her a former night; and to shew the greatness of her longing for him, she desires it might be quickly, not to stay till Monday, for if he did, she should be mighty impatient, if he delayed so long; and withal she told him, her sister Bell, which I take to be my lady Arabella, had not discovered it, nor heard the noise that was between them that night they were together. My lady Lucy, she tells you, he owned there was an unlawful love between him and her sister, it must needs then be true, if he owned it to her, and he said that it put him upon mighty inconveniences, and he owned he had done so much wrong to the family, that he could never regain it. You hear my lady tells you she forbad him the family; and you hear likewise what little designs he had, and what he pretended that he might continue to come to the family, if you believe my lady. For he pretended that this would be the way to make it public, if he were forbid the house altogether; but he would be under her direction, he would do nothing but what she should approve of; that he would not apply himself to her daughter to speak to her, nor write to her. And you hear that for all this, he did, before my lady Arabella, vent a great deal of passion for [illegible] that she was the only person in the world [illegible] any love for; that my lady Arabella tells [illegible] heard him say, when he had seen her fa[illegible] like a dead woman. When he had [illegible] lady a promise that he would not co[illegible] leave, he sends his own wife thither fi[illegible] that he might come down, and very earnest and importunate she was with her mother, not knowing any thing of the intrigue, he was made instrumental to get leave to come down. And at length leave was given him to dine there, as he went to Sussex; but he comes at 9 o'clock at night, and then excuses were made by him for it; and my lord Berkeley desiring him to stay, who was not acquainted with the unlawful affection that was between his daughter and him, and accordingly he did stay till Saturday. You hear, gentlemen, what is said to you now, as to her carrying away, for all that has been hitherto observed to you, has been only to the unlawful solicitation of this lady to unlawful love. My lady tells you, that that very night that my lord Grey went from her house was her daughter carried away. You see then, the question will be, whether my lord had any hand in carrying her away, and for that you must weigh these circumstances. It is pretty manifest that this coachman, that is, Charnock, did carry her away. Now the chaplain, tells you, that my lord was earnest in several discourses that day with Charnock, and under some great trouble, he could discern that in his countenance; and several times he was sent for to him, as though there was some mighty earnest business imposed upon Charnock to do. Charnock made as though he went away, it seems with his lord, who went away about 4 o'clock; and the lady was carried away in the morning between 12 and 1, which is the time spoken of. Now to prove that Charnock carried her away, you have these circumstances: She was brought to the house of Hilton, there was a lady brought in there that morning about 9 o'clock by Charnock; Charnock was the afternoon before going to Up-Park with his lord, but it is manifest that he was back that morning at London, and so brought the lady thither that morning. If you believe Hilton, the witness, it is manifest she had been a journey, and was very weary, so that she was fain to go to bed at 9 o'clock. This lady that was there brought by Charnock and his wife, was afterwards carried to Patten's house, Mrs. Hilton swears it; and Mr. Patten swears they did come in there. There was a great deal of policy used in the case, and care taken; and Mrs. Hilton tells you why; they saw some men about the door, which they were afraid might be men that came to look after the lady, and so they slid away through the back-door, which proves something in that she was to be concealed. Then consider the circumstances of the clothes that do so exactly agree. There was a gown with red and green flowers striped, and there was petticoat striped with red, and a white quilted petticoat under that the lady had on that came to Patten's; and the lady's woman who lay with her and looked a[illegible] her, describes to you her gown and petticoat to be the same as those were that the lady had on, who was hurried away from Patten's [illegible]se at night to another lodging. We cannot indeed discover where that was. Now then, after this, my lord Grey, he undertakes to my lady Berkeley, that he would go to Up-Park, and stay there till he had leave to come to town. Patten who saw the lady, swears this is the very lady that sits here, and who has been examined, but denies it. If she was the lady that was brought to Patten's, she was the same that was brought to Hilton's, whither Charnock brought her; and so there is a full evidence of the guilt of Charnock and his wife, who was the solicitor about the business, took lodgings for her, helped her away from Hilton's, and helped her to Patten's, and from Patten's some where else. So that if you believe them, Charnock and his wife are both guilty. As to my lord Grey, who went to Up-Park on the Wednesday, soon after he came to town again, and it is positively sworn that he came to Jones's upon the Tuesday, and sent for Jones out to come to him, who was in a hackney-coach, where he discoursed with him a pretty while, and afterwards the room is provided for the lady up two pair of stairs in Jones's house. She is brought thither, my lord Grey came twice to the house, and both times without

his periwig, as the maid swears she knew him very well, and there he took lodgings for a lady, and that lady came afterwards. Now if this falls out to be my lord Berkeley's daughter then you have it pushed home upon my lord Grey. That this was my lord Berkeley's daughter, you have this evidence made up of circumstances. First, the policy used in the case by my lord, to have all so privately managed. Another circumstance there is, though at first it seems but slight, yet if it be well considered will signify very much, and that is what the maid does testify. She says her linen was brought down to be washed, and there was a shift that was very remarkable, for it had the body of one sort of cloth, and the sleeves of another, and that she took special notice of it, and thence would have concluded that the lady was not a person of quality; and another of those very shifts that belonged to my lady Harriett was brought to her afterwards, and she swears it was of the same fashion and make with that which the lady had that lodged in their house; and it was, as all do agree, just in the same manner as this was, with the body of one cloth and the sleeves of another. Then, there is colonel Fitz-Gerrard was in those very lodgings at that time; and he comes and tells you, that having heard of my lord Berkeley's daughter's departure from her father, and considering the circumstances that he had heard the maid say that it was my lord Grey's mistress that was brought in thither, and such other circumstances concurring, he did conclude this to be the lady, and he tells Jones his suspicions concerning it (whose wife was by the way so very officious to conceal the lady, that she would not suffer her maids to come up stairs, but would rather shut up the shop-windows herself, than the maids should come to see her.) Mr. Jones having discourse with the colonel about this, and finding the lady was smoked, was angry at the colonel's curiosity which increased the colonel's suspicion. He told Jones, this must needs be the lady, and I will see her. Which he very much fearing, intreated him not to disturb the house at that time of night, and upon promise to let him see her the next morning, he desisted; but told him, h knew not what he was doing, he did a very ill thing to conceal a young lady from her friends; her father and mother not knowing where she was, might give her over for dead. But in the morning the lady was conveyed away. This, to me is a shrewd circumstance that Jones knew her to be the lady, and to conceal all the matter, got so much time to send her away. To what purpose else was she carried away, when the colonel was to see her, that he might be satisfied about his suspicion, and so acquaint her father? But she was conveyed away presently. Gentlemen it is manifest by all the witnesses, and by what the defendants counsel themselves opened, that under this absence of the lady from her father, he had an intercourse of letters with her, which is a great circumstance to prove that she was carried away by his contrivance. He could tell the lady Lucy, that she should never be brought back again, without he might have leave to visit her. So that, it seems, he had full power over her. There is another gentleman, who has told you he was set as a spy over him; and if you believe him, my lord Grey has made a confession to him as he would to his ghostly father; he has told you the intrigue of all his unlawful love, from the beginning to the end; how long he was engaged in it before he had any comfort from the lady, when he had the first demonstration of kindness from her, and the whole matter all along. There is another gentleman that was sent to treat with my lord Mr. Smith) concerning this; he tells you my lord Grey and he being in a long discourse, he offered that he would deliver her to one person, but not to another; She should be first sent to his brother-in-law, Mr. Nevil's in Berkshire; afterwards to another place, Mr. Petit's, so as he might have access to her; but he tells you also, this was the conclusion of all, he would never part with her, nor never deliver her, upon any other terms, than that he might have access to her whenever he would. Now lay all this together, and see what it amounts to. He that had so great a passion for her, he that could not be without a sight of her, but used such ways to come to speak to her; he that had letters from her all along; he that had such power over her, that he could deliver her, as he said, or not, and would keep her in spite of her father, unless he might have leave to visit her as often as he pleased; and consider then I say whether it is not more probable, that he had a hand in carrying her away. It is plain, beyond all contradiction, she was carried away by his man, who was in his company that night; he pretended to go to Up-park, but was in London the next morning by nine o'clock. My lord came afterwards to take lodgings for her, two days one after another. Whether then he be not as guilty as Charnock, or any of the rest, nay, indeed, the main mover of this ill thing, you are to consider upon the evidence that has been given. But you must, withal, take into your consideration, what my lord Grey says for himself. He asked several questions of the ladies that were examined, but truly never a one worth the remembering, that I know of, or that made to his purpose. He does indeed pretend that the young lady was hardly used at home, and that she fled to him as to a sanctuary for protection; and you hear the several witnesses examined to that point; and they all say she was used, notwithstanding the discovery of this ill business, with the greatest kindness and respect that a child could be used with by her mother, and no hardship put upon her but only she was forbid to write any letters to my lord Grey, and had a maid put upon her to keep her from running away, because once before she attempted it, as her mother did believe. The lady herself is here, has been examined; she indeed denies this all along; she says that this coach-man Char-

nock did not carry her away; she says she was not at Hilton's, nor at Patten's, nor at Jones's; that she never see my lord Grey till a long time after she went from her father's. But this is all disproved by the other witnesses; and so whether you will believe her single testimony, or their's, I must leave it to you. You must consider under what circumstances she is, and truly she doth not seem to be any way fit to be believed in this matter. Jones and his wife are as guilty as any of the rest, for their contrivance to keep her secret, especially after that he had promised Fitzgerrard to let him see her. Look you, as to the long discourse my lord Grey made, I must tell you, it is not to be believed further than it is proved. Now my lord Grey did tell us, that he from time to time had given caution to my lady, that she should look to her daughter, and lock her up, for else she would, as he believed, run away. My lady denies it all, and so it goes all for nothing, and you are to take no notice of it. I must leave it to you whether you do believe what these witnesses have sworn, if you do believe the evidence produced for the king, most certainly they are all five guilty of the charge in the information.

Just. *Dolben.* There is no evidence against Rebecca Jones.

L. C. J. No, there is not

Serj. *Jefferies.* No, we cannot insist upon it that there is, you must find her not guilty.

Just. *Jones.* I must remember you of one thing, gentlemen, and that is, what dropped from my lord Grey's own mouth, that when my lord, as he says, gave his advice that she should be looked after carefully, he would not give his reason for it, but after he did, as he says, tell it my lady Lucy, that she complained to him at St. John's, that she led the life of a dog, or a slave, and she would not endure it any longer, and desired him to assist her, or she would do herself a mischief. Why was not this told before?

L. C. J. Ay, but brother, my lady Berkeley denies it all too.

[Then the jury began to withdraw.]

Earl of *Berkeley.* My lord chief justice, I desire I may have my daughter delivered to me again.

L. C. J. My lord Berkeley must have his daughter again.

Lady *Henrietta.* I will not go to my father again.

Just. *Dolben.* My lord, she being now in court, and there being a Homine replegiando against my lord Grey, for her, upon which he was committed, we must now examine her. Are you under any custody or restraint, Madam?

Lady *Henrietta.* No, my lord, I am not.

L. C. J. Then we cannot deny my lord Berkeley the custody of his own daughter.

Lady *Henrietta.* My lord, I am married.

L. C. J. To whom?

Lady *Henrietta.* To Mr. Turner.

L. C. J. What Turner? Where is he?

Lady *Henrietta.* He is here in court.

[He being among the crowd, way was made for him to come in, and he stood by the lady and the judges.]

L. C. J. Let's see him that has married you. Are you married to this lady?

Mr. *Turner.* Yes, I am so, my lord.

L. C. J. What are you?

Mr. *Turner.* I am a gentleman.

L. C. J. Where do you live?

Mr. *Turner.* Sometimes in town, sometimes in the country.

L. C. J. Where do you live when you are in the country?

Mr. *Turner.* Sometimes in Somersetshire.

Just. *Dolben.* He is, I believe, the son of sir William Turner that was the advocate, he is a little like him

Serj. *Jefferies.* Ay, we all know Mr. Turner well enough. And to satisfy you this is all a part of the same design, and one of the foulest practices that ever was used, we shall prove he was married to another person before, that is now alive, and has children by him.

Mr. *Turner.* Ay, do, sir George, if you can, for there never was any such thing.

Serj. *Jefferies.* Pray, Sir, did not you live at Bromley with a woman as man and wife, and had divers children, and living so intimately were you not questioned for it, and you and she owned yourselves to be man and wife?

Mr. *Turner.* My lord, there is no such thing; but this is my wife I do acknowledge.

Att. Gen. We pray, my lord, that he may have his oath.

Mr. *Turner.* My lord, here are the witnesses ready to prove it that were by.

Earl of *Berkeley.* Truly as to that, to examine this matter by witnesses, I conceive this Court, though it be a great Court, yet has not the cognizance of marriages: and though here be a pretence of a marriage, yet I know you will not determine it, how ready soever he be to make it out by witnesses, but I desire she may be delivered up to me, her father, and let him take his remedy.

L. C. J. I see no reason but my lord may take his daughter.

Earl of *Berkeley.* I desire the Court will deliver her to me.

Just. *Dolben.* My lord, we cannot dispose of any other man's wife, and they say they are married. We have nothing to do in it.

L. C. J. My lord Berkeley, your daughter is free for you to take her; as for Mr. Turner, if he thinks he has any right to the lady, let him take his course. Are you at liberty and under no restraint?

Lady *Henrietta.* I will go with my husband.

Earl of *Berkeley.* Hussey, you shall go with me home.

Lady *Henrietta.* I will go with my husband.

Earl of *Berkeley.* Hussey, you shall go with me, I say.

Lady *Henrietta.* I will go with my husband.

Mr. *Williams.* Now the lady is here, I suppose my lord Grey must be discharged of his imprisonment.

Serj. *Jefferies.* No, my lord, we pray he may be continued in custody.

L. C. J. How can we do that, brother, the commitment upon the Writ De Homine Replegiando is but till the body be produced, and here she is, and says, she is under no restraint.

Serj. *Jefferies.* My lord, if you please to take a little time to consider of it, we hope we may satisfy you that he ought still to be in custody.

L. C. J. That you can never do, brother.

Serj. *Jefferies.* But your lordship sees upon the proofs to day, this is a cause of an extraordinary foul nature, and what verdict the jury may give upon it we do not know.

Att. Gen. The truth of it is, we would have my lord Grey forth-coming, in case he should be convicted, to receive the judgment of the Court.

L. C. J. You cannot have judgment this term, Mr. Attorney, that is to be sure, for there are not four days left. And my lord Grey is to be found to be sure, there never yet, before this, was any thing that reflected upon him, though this, indeed, is too much and too black if he be guilty.

Just. *Dolben.* Brother, you do ill to press us to what cannot be done; we, it may be, went further than ordinary in what we did, in committing him, being a peer, but we did it to get the young lady at liberty; here she now appears, and says she is under no restraint; what shall we do? She is properly the plaintiff in the Homine Replegiando, and must declare, if she please, but we cannot detain him in custody.

L. C. J. My lord shall give security to answer her suit upon the Homine Replegiando.

Mr. *Williams.* We will do it immediately.

L. C. J. We did, when it was moved the other day by my brother Maynard, who told us of ancient precedents, promise to look into them, and when we did so, we found them to be as much to the purpose, as if he had cast his cap into the air, they signified nothing at all to his point. But we did then tell him (as we did at first tell my lord so) if he did produce the lady, we would immediately bail him. And she being now produced, we are bound by law to bail him. Take his bail.

[And accordingly he was bailed at the suit of the lady Henrietta Berkeley, by Mr. Forrester, and Mr. Thomas Wharton.]

Earl of *Berkeley.* My lord, I desire I may have my daughter again.

L. C. J. My lord, we do not hinder you, you may take her.

Lady *Henrietta.* I will go with my husband.

Earl of *Berkeley.* Then all that are my friends seize her I charge you.

L. C. J. Nay, let us have no breaking of the peace in the Court. But, my lord Cavendish, the Court does perceive you have apprehended yourself to be affronted by that gentleman Mr. Craven's naming you in his evidence; and taking notice of it, they think fit to let you know, that they expect you should not think of righting yourself, as they have some thoughts you may intend. And therefore you must lay aside any such thoughts of any such satisfaction. You would do yourself more wrong by attempting to right yourself in any such way.

Lord *Cavendish.* My lord, I am satisfied that your lordship does think it was impertinently spoken by him, and shall not concern myself any further, but only desire that the Court would give him some reproof for it.

Then the Court broke up, and passing through the hall there was a great scuffle about the lady, and swords drawn on both sides, but my lord chief justice coming by, ordered the tipstaff that attended him (who had formerly a warrant to search for her and take her into custody) to take charge of her, and carry her over to the King's-bench; and Mr. Turner asking if he should be committed too, the chief justice told him, he might go with her if he would, which he did, and as it is reported, they lay together that night in the Marshal's-house, and she was released out of prison, by order of the Court, the last day of the term.

On the morning after the trial, being Friday the 24th of November, the jury that tried the cause, having (as is usual in all cases not capital tried at the bar, where the Court do not sit long enough to take the verdict) given in a private verdict the evening before, at a judge's chamber, and being now called over, all appeared, and being asked if they did abide by the verdict that they gave the night before, they answered, yes; which was read by the clerk of the crown to be, that all the defendants were guilty of the matters charged in the information, except Rebecca Jones, who was not guilty; which verdict being recorded, was commended by the Court and the king's counsel, and the jury discharged.

But in the next vacation the matter was compromised, and so no judgment was ever prayed, or entered upon record, but Mr. Attorney General was pleased, before the next Hilary-Term, to enter a Noli Prosequi as to all the defendants.*

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* See the next Case.

291. The Trial of THOMAS PILKINGTON,* esq. SAMUEL SHUTE, esq. Sheriffs, HENRY CORNISH,† Alderman, FORD Lord GREY of Werk, Sir THOMAS PLAYER, knt. Chamberlain of London, SLINGSBY BETHEL,‡ esq. FRANCIS JENKS,|| JOHN DEAGLE, RICHARD FREEMAN, RICHARD GOODENOUGH,§ ROBERT KEY, JOHN WICKHAM, SAMUEL SWINOCK, JOHN JEKYLL, Senior, at Nisi Prius at the Guildhall of London, for a Riot, and an Assault and Battery on Sir John Moore, then Lord Mayor: 35 CHARLES II. A. D. 1683.

[Roger North writes thus as to the contests respecting the elections of Sheriffs of London out of which this case arose:

"I intend now to present a denouement of affairs, a new turn, which happened upon certain rectifications, brought about in the city of London in the year 1682; and began in gaining the election of sir John Moore for lord mayor, and was followed by the appointment of sir Dudley North and sir Peter Rich for sheriffs, whereupon Ignoramus vanished: But all this was not done without immense concussions and noise, that affected not only the city of London, and the countries thereabouts, but, in great measure, all England besides. The author hath given nothing considerable of this whole matter, whereby any thing of it may be understood; but only some snatches of facts, either mistaken or false, which serve in the quality of mishapen vehicles of his base detraction. I have indeed wondered often that, among the many books, of one sort or other, that have come out, whereof some, as this author, pretend to be historical, and even of those very times, yet none have offered at a clear relation of these city doings; although the importance of them, to the public, was great; and they were full of strange turns and surprises, such as, I think, none, but the English stage, could present. For the transactions, however limited within the liberties of the city, which was but a private capacity, yet, consequently, they improved to a grand crisis of state, and hinged about the whole machine of king Charles 2's government, from a posture of great uncertainty, trouble, and hazard of the public public peace, to a complete settlement of him and his authority in a shining serenity and peace. And this tranquillity, to the utter confusion of the adverse party, continued, with little shew of change, till that immense and dolorious loss by his demise, when the sluice-gates of change opened: But these affairs are beyond the limits of my undertaking to account for. But, as I said before, little remains above ground to notify these brigues, that had such monstrous effect, to posterity; and, like the items of Oates's plot, are, as the acts of the heroes of antiquity, turned into fable, as it were, or nothing. And therefore I take hints from the author to revive here what can be recollected of them by one who, in those days, attended close at all public agitations of the time, and of these movements more especially.

Very much depended on the character of that single citizen, sir John Moore. He was a person very grave, and of a retired and virtuous course of life; conformable,

* From a pamphlet, entitled, "The Trial 'of Tho. Pilkington, esq. Samuel Shute, esq. 'sheriffs; Henry Cornish alderman; Ford 'Lord Grey, of Werk; sir Tho. Player, knt. 'chamberlain of London; Slingsby Bethel, 'esq.; Francis Jenks, John Deagle, Richard 'Freeman, Richard Goodenough, Robert Key, 'John Wickham, Samuel Swinock, and John 'Jekyll, sen. for the Riot at Guildhall, on 'Midsummer-day, 1682. Being the day for 'election of sheriffs for the year ensuing. 'London: Printed for Thomas Dring, at the 'Harrow, at the corner of Chancery-lane end, 'in Fleet-street, 1683.'"

"May 11, 1683. I do appoint Tho. Dring "to print this trial, and that no other "person presume to print the same.

"EDM. SAUNDERS."

See 1 Burnet's Own Times, 535. Pilkington was afterwards Lord Mayor for two years together, 1689, 1690.

† See his Case for High Treason, A. D. 1685, *post.*

‡ See his Case, vol. 8, p. 747, of this Collection.

|| See his Case, A. D. 1676, vol. 6, p. 1190, of this Collection.

§ In N. Luttrell's MS. "Brief Historical Relation," &c. in the library of All Souls' College, Oxford, the following account is given of a remarkable exercise upon this Goodenough of the power of commitment, as it seems, for contempt: "The 4th September, 1682, the sessions began at Hicks's-hall, for the county of Middlesex, when the jury found several bills; and upon complaint against Mr. Goodenough, the under-sheriff, for not providing a dinner for their worships, the justices committed him to prison denying bail."

Of this Goodenough, see more in the report of the Trial of Cornish, for High Treason, A. D. 1685, in this Collection.

and constant at church, of loyal principles, and very just and honest in all his dealings; all which his very enemies could not deny: And although all the factious party would have made him their property, yet few intended him, personally, any harm. He was by nature, not only careful, but also very fearful of consequences; but, being once satisfied of the justice in what concerned him to do, he wanted no resolution or courage to perform it. In the mean time, his being suspicious, dubious, cautelous, and not soon determined, but hesitatory on unusual occurrences in his office, made him pass for a person timidous, and of a fickle and irresolute temper; otherwise he had not been mayor at that time, as will be shewed. He was forward in nothing, and, being sensible of his soft unsteady elocution, inclined to silence: but his behaviour was always modest and respectful to all, and, by his words or carriage, offending none, but to his betters extreme submiss. His ordinary discourse, as well as his countenance, was faint, and tended to dejection, so as one would think he always desponded; and that made folks apt to guess he had no firmness or resolution at the bottom, or at least not such as might sustain him upright under difficulties. All which made it wonderful that, in so troublesome a mayoralty, as he had, and, afterwards, under a more troublesome inquisition that fell upon him, of which in due time, he should carry himself with such firmness and perseverance, in all the substantial points of his difficulties, as he did. Whereby it was plain that he carried in his mind a determination, that neither public nor private should suffer through him, whatever men might think to extort from him, or whatever should happen to himself. Which character was cut out for this time and public occasion; for nothing but such firmness of mind and manifest goodness, with a seeming passive disposition, could have protected him from those rages of violence as very often threatened him: Which, probably, had broke loose upon any one, in his post, that had carried matters with a stern and minatory behaviour.

'The loyal citizens, knowing this person to be a just man, and one who would not combine with faction, and having a view of some use to be made of such a one for setting the affairs of the city right, applied themselves so effectually that they carried the election of lord mayor for him. This was some surprise to the factious party, though they did not think his election of any mighty consequence to them; and, his course being next, many thought it not reasonable, nor creditable in the city, to put him by; and they looked upon him as one who, by terrors (in which the faction traded much in those days) if he had been, as they thought he was not, very averse to them, might be wrought into any measures. And his office did not affect the return of juries, which was their palladium; therefore they did not unite as one to exclude him, as they did to carry the choice for sheriffs; else (as was seen in that case) he could never have been chosen. And, if they had had a magical intuition that sir John Moore had been capable of acting against them as he did, they had fought at the choice as high against him, as ever they did against any other. I cannot but reflect on the vanity of craft in affairs of the public, liable to strange unforeseen turns, and derived upon the least accidents that give a start to them. For here the singular character of this good man, which had not its like perhaps in all the three kingdoms, coming on by a sort of contingent, under which the faction was not alarmed, and the loyalists had but faint hopes, produced an exquisite opposition to the party, and, in the end, deprived them of their fortress of the sheriff's office, and laid them open, in London and Middlesex, to the great and small shot of the law, for their daring unguarded misdeeds; than which nothing could have happened more fatal to the whole ordonnance and strength of the faction: The steps and manner of which event to expose, is the business of what follows.

'It hath been before observed that the best, and, generally, most substantial of the citizens, whom the author honours with the title of the Court Party, were much concerned at the disorder the city was in; whereof almost the whole authority and justice was fallen into the hands of a party, and the very exterior countenance of the city was altered for the worse. All the feasting and common good fellowship of the neighbourhood laid aside; and, in coffee-houses and corners of the streets, continual debates about party making and party working, and not seldom right down scolding and quarreling. This eager contention shewed there was a good body of citizens, that had good hearts and spirits, and who would readily join in any reasonable methods, as might be found, to restore the ancient order and course of living in the city. And this party, among the better sort, was observed to encrease in numbers, diligence and application, by their reasoning with the livery men, moderating them, if possible, to comply somewhat with the government, and not always to make scandalous elections of sheriffs, as they had lately done; minding them of the peace and vast trade they had had, and still enjoyed under the government, and that such intolerable oppositions must, at length, come to a rupture and lose all. So the peaceable citizens to those who perpetually raved about with the words 'Popery, French, and arbitrary Power' flaming out at their mouths. On the other side, the court and their friends were not idle; but very many of them came and kept company with the friendly citizens, encouraging and countenancing them. The

good effects of this intercourse and conversation appeared first in settling the point of sir John Moore, and, after that, in bringing forward, by his means, what the citizens had long thought of to set up, the custom of appointing one sheriff by a ceremony called 'my Lord Mayor's drinking;' leaving the other sheriff, as the custom was, to the common hall. For if one good sheriff were gained, they did not fear what hurt the other alone could do; for both sheriffs made but one officer.

"This custom, of my lord-mayor's designing one of the sheriffs by drinking, is very singular, and seems to be a jocular, rather than, as it was, a solemn proceeding. And, according to the ancient constitution of the city, it was a most reconciling expedient; without which, or somewhat else of like efficacy, the government of it anciently could not have been carried on. And, unless I give some clear declaration of the nature and use of this custom, the justice of the controversy, that fell out about it, cannot be well understood. The manner is thus: At the Bridgehouse feast, which is some time before the 24 June, the day of the election at Guildhall, the lord-mayor takes his time, and, out of a large gilt cup, drinks to some person he names by the title of Sheriff of London and Middlesex for the year ensuing. If the person be present, the cup is immediately borne to him, and he pledges my lord mayor: If he be not present, then the cup is conveyed in the great coach, with the sword bearer and officers, openly, and in state, to the house of the person drank to, and the officer, declaring the matter, presents the cup to him; and then he is called my Lord-Mayor's Sheriff, and, not long after, he is summoned to the court of the lord-mayor and aldermen, and there, if he holds, he enters into bond to take upon him the office at the time; and if he fines off, then, in a like method, the cup is sent to another, till the person is pitched upon that will hold: And this way of drinking and fining off is of great use to the city, for it brings money into the chamber; and it is called going a Birding for Sheriffs. At Midsummer-day, when the common-hall meets for the election of sheriffs, and the lord-mayor and court of aldermen are come upon the *Suggestum*, called the Hustings, the common serjeant, by the common crier, puts to the hall the question for confirming the lord mayor's sheriff, which used to pass affirmatively of course. After that, the lord-mayor and aldermen rise and go up into the room they call the Court of Aldermen, leaving the floor or body of the livery men below to choose another sheriff by themselves, without their interposing or being concerned in the choice: And, if any difference happens, so that a poll is taken, the old sheriffs preside and see it orderly done. And after the person chosen is fixed, then the lord-mayor and aldermen come down again to their places, and there, in full assembly of the common hall, the election, as to both persons, is confirmed and declared. For as the lord-mayor's sheriff was confirmed by the hall, so the other person, chosen by the hall, is confirmed by the lord-mayor and aldermen; and either side doth not interfere with the other. This had been the custom of immemorial usage in the city, and at length settled by act of common council; and so went on to about Forty One, when for like ends as now, it began to be practised upon in favour of the livery, which the faction began to set up in opposition to the lord-mayor's; and so, for two years before the mayoralty of sir John Moore, the election of both sheriffs were, by factious lord-mayors, thrown into the common hall. Otherwise nothing of common law, confirmed by statute law, could be of more regular and constant right, exercised by the lord-mayors of London, than this was; as the various prints in the controversy, published about that time, do largely argue and demonstrate.

"But this custom seeming so bizzarr, and the faction raising such a clamour against sir John Moore for setting up his right by it, as if he usurped upon the rights of the city, to whom it belonged, said they, in a corporate assembly to choose their sheriffs, I shall give the plain and true rationale of it. It is first to be considered that the lord-mayor, aldermen, and the livery men, assembled in the common hall, are, for the purpose of choosing officers, the representative body of the city; whereof the lord-mayor is the head, being an integral part of that politic body, and hath a negative voice upon all their proceedings, so as, without him, no corporate act whatever can, at any time, be made or done so as to bind the city. In old times the mayor was the Custos of the city, and, since the incorporation, continues the like charge, and, as head of the corporation, is answerable for the good government of the city. The sheriffs of London and Middlesex are the king's officers, as in other counties, to collect the revenue, and to account in the Exchequer; and it was only the choice or nomination of them, and no more, that is vested in, or belongs to, the city; but the office itself is as at the common law, and no part of the city or its incorporation, as other officers, viz. town-clerk, sword-bearer, &c. are. And, as in other counties, the sheriffs are Custodes Pacis, and have, for that end, the Posse, so here they are to attend the government of the city, and assist in keeping the peace; and it is after the same manner as when Justices of Oyer and Terminer come into a county or city, the sheriffs are bound to give attendance, and to execute their mandates. Besides, the nomination being in the city, if the revenue be not answered in the Exchequer, the city must pay it over again. These considerations made the lord-

mayors be very solicitous to have able sheriffs chosen; and that created differences between him and the aldermen on the one side, and the floor or livery men on the other. And, if persons were named to be sheriffs that the lord-mayors did not think fit to trust, they would disagree, and then there was no choice at all; which endangered the seisure of their franchises, and brought other inconveniences to the city. And, thereupon, the matter fell naturally into a compromise between the lord-mayor and the floor, as, for example, thus: 'If the Lord-Mayor,' said the citizens, 'will allow us of the floor 'to choose one, and let him stand, then we 'will confirm' (it could not be called choose) 'any other person the lord-mayor shall nominate': And so there could be no clashing; but, of the two sheriffs, the lord-mayor was to nominate one, and the floor to choose another, and the whole body to confirm both. And, to the end that the person, appointed by the lord-mayor, might be publicly declared and known, the way was found out and brought into use, of his lordships drinking in public manner, as hath been shewed. And there is the account how, and for what intent, the custom was introduced; which answers the clamour of usurpation upon the city. For the lord-mayor was not more bound to agree with the floor than they with him; and the composition of each having a nomination of one officer, without the contradiction of each other, reconciled all.

'But now, as to the fact at this time, it was from the citizens that the court was first admonished of this expedient for regulating the sheriff's office by a revival of this ancient custom of my lord-mayor's drinking. But, after it had been communicated to the king, and well considered by those about him, it was well approved of; and a resolution was taken to put it in execution, and, if possible, to carry it through. And the king was so sensible of his safety and interest in the consequence, that he resolved by himself to prove my lord-mayor, and, if he complied, to take care the laws should defend him in it, as all agreed they would do: And, for other disorders, if any happened, that he would not be unprovided to assist the government, and to keep peace in the city. The lord-mayor had been before pressed, by divers of the citizens, to do it of himself; but he was scrupulous and doubtful, and would determine nothing. At length he was sent for by the king, and, in his majesty's presence, divers of the council, and the attorney-general, explained his power to him, that he might nominate one sheriff, as the custom of the city was, though some of his immediate predecessors thought fit to wave it. And the king himself encouraged him, with expressions, not only of protection, but command; and, at last, after much hesitation, he determined roundly to conform, and, all at once, promised the king to send his cup to any citizen his majesty should nominate to him. He was slow, but sure; and what with his judgment that the city was in such a state that a regulation was become necessary, and what with the king's promise to stand by him, together with the concurrent advice of his court of aldermen, who were his regular council, he contracted a firmness of mind to pursue his point, and he made it good; but with many an hard rub and difficulty emerging, that faction stirred up against him; as may be readily imagined by those who know the humour of abused popularity.

"This difficulty over, another sprang, as hard to accommodate; and that was to find some wealthy and reputable citizen, who, being drunk to, would not fine off, but hold under that method of appointment. The taking one of a low sense, and to support him, would look trickish, and, at that time, the court would use no means but what were legal, justifiable and reputable. Divers citizens were spoke to upon this account, with assurance that nothing extraordinary would be required, but the year would pass in the usual forms and feasting; and all business of the law would fall of course into the hands of the under officers, as formerly had been the usage. Many were not only willing, but desirous to have stood, if it might have been, as they alledged, with safety. But they were told that my lord-mayor had no right to make a sheriff, but the common hall only; and whoever should stand upon his title, would be involved in law-suits, and, moreover, be complained of in parliament, and what would come of that they could not tell; and not caring to stand in hazard of so much trouble they desired to be excused. The occasion of this scrupulosity was the behaviour of the faction, who, in pursuit of their designs, never breathe any thing moderate. For as soon as they found my lord-mayor would exert his power by drinking, and all their applications, to divert him, failed, although urged with all the forms, and in all the shapes, of menace as well as flattery, whereby they were prodigiously surprised; then they wound up their whole party and interest in and about the city, and charged them with the most horrible and bugbear denunciations they could invent and put in words, to deter all citizens from holding on that foot. And accordingly, they went bellowing about into all companies, and places of promiscuous resort; 'Persons, Estates, all must go to Perdition;' hanging was the mildest word came out of their mouths; law, parliament, knocking of brains out, hell and damnation (if they might presume so far) were to be the certain fate of any one who should dare to stand, against the city, as they called it; but, *dictum factum*, ruin, in a word, was to follow: And, to do them right, they honestly meant as they said.

'While these intimidations run high, the court at a loss for a good man, the citizens busy as bees, some persuading others, but none inclined to stand, every one wanting courage to bear the brunt; sir George Jefferies the recorder, or, through him, some of the citizens, insinuated that the lord-keeper's brother, a Turkey mercha t, lately arrived from Constantinople, and settled in London, rich, and a single person, was every way qualified to be sheriff at this time, in case he could be prevailed with to stand, as they hoped might be done by the lord-keeper's means, if he would endeavour to persuade him. This extremely took with the king, and soon set him at ease; for he found no formalizing scruples on the lord-keeper's part; and, as for the citizen, he was made to understand that there was no hazard at all. For when the government of a city calls a man upon an office, who by his oath of freedom is bound to obey, and he takes it upon him and performs it honestly, what has he to be afraid of? And if men should regard the brutish noise and threats of violent people against law and common sense, the business of the world must be at a stand. And he was made also to understand what an advantage such an opportunity was to oblige a king who had power to gratify by employments any fit persons, such as he was, to much greater profit in consequence than all his extraordinary charges. And it was not a small matter to gain so much honour and repute with the best of the city, as well as court and country, as the standing stoutly in this gap would procure him. These reasons got the better of the qualmish objections, as he must needs make. Nor were these brothers mistaken in their calculates; for the event made good all their prognostics; for no single person in England had more esteem with the king, as long as his majesty lived, than Mr. Dudley North had. And, to say the truth, the king's whole design and project was perfectly closed by this distinguishing piece of service of Mr. North. For he desired chiefly an authority and reputation in the person who was to make good this necessary pass; which, by the whole faction, was most industriously and maliciously represented, as an arbitrary project, and of desperate danger to whomsoever should stand in it. And who could pretend that, when a person of that quality and value, and so well advised, stood? every one must conclude that he was fully satisfied of the law by which he was safe. And, as for himself, he was of a peculiar temper for such a business; for being used to adventures, and having run much greater hazards, and dealt with people as violent as any here could be, if he was once satisfied of right and reason in any business, he used to slight every thing else, and say that good luck attended being in the right.

This Mr. North, (afterwards sir Dudley) was bred a Turkey merchant, and had traded at Smyrna, but passed most of his time in Constantinople, where he fell into acquaintance and vast dealings with beys, and bashaws, and other great officers of the Porte; and had run very great hazards with them, but had the good fortune to reap the profit he expected by it. He was very quick of thought, and no less sagacious in plumbing the truth of things, and probability of events; which made divers, that did not reach his lengths, wonder at his bold strokes. He made justice the rule of his actions, and on that bottom built his assurances; and therein he seemed intrepid, and to defy all opposition. He never used tricks or subterfuges, and hated them in others, and had a peculiar antipathy to a false knave; for he seldom fell into a passion but when such crossed him, and then he had no patience, but let fly without temper or consideration; which too plain dealing created him enemies, and some great hazards. He was a frank and jolly merchant, familiar, easy and jocose, obliging to all, without any stiffness or pride; friendly to all that needed, and never made advantage of the weakness or want of experience of young men, but, on the contrary, assisted them. He had a goodly person, and mind capable of sitting at the helm of any managery; intelligent and facetious; and what they call a Bon Compagnon, so much that a stranger would mistake him, as if he were good for nothing else. In a word, he was loved and caressed by all that knew, and did not envy him. He had not been long in England when this trial came upon him; but, in that time, pursued trade; for which end, he settled himself in the city; and coming to be concerned in the African company, was chose of their committee, and there soon gave a demonstration how fit he was to be a pilot in trade of any magnitude. The actions and fortunes of his life were so considerable, that, joined with the character of his genius, would make an history (if one well instructed had the penning of it) as useful and entertaining as the life of any private person whatever might be, and, towards it, I have thrown in this mite, which, to all other purposes, I own to be superfluous.

'But, to resume the intended relation: matters being thus far concerted, my lord mayor sent his cup in full parade and form to Mr. North. This was no sooner known, but all the artillery of the faction was pointed at him, in order to terrify him, and make him fine off. Most of the factious men in the city, that had acquaintance with him, especially his brethren of the Turkey Company, who were too much that way, took their opportunities, more or less, to expostulate in discourse with him, saying why would he be undone? 'For if you,' said they, 'take this 'office upon you, upon this (at best) dubious 'title, you will know no end of law-suits,

'and be crushed by the parliament to boot; 'and what safety can you propose to your-'self?' His answer used to be, 'I am a 'citizen sworn, and if the government of this 'city calls me upon an office, I will obey, 'and never break my head about titles.' He was plied with penny post letters, and so were his nearest friends and relations. They came all out of pure friendship and respect, wishing those persons would interpose to rescue him from inevitable ruin. They were so malicious to find out sir Robert Cann at Bristol, father of the lady Gunning, whom he then courted, and wrote to him to let him know that his daughter was going to throw herself away upon a man of a desperate fortune, and that would certainly be hanged; and he resented it, but the lady knew better; so by virtue of his good stars, that blow missed its effect. And what was most extraordinary, was that, during all the time of the brigues in the city concerning him, and both town and country rang of his name, which was also bandied about in multitudes of pamphlets; he went about his business, and diverted himself just as he used to do, and minded the stirs no more than if they had not concerned him. He was, by common talk and pamphlets, made so remarkable, that, wherever he went, people started out of the way, looking at him, and crying 'That's he.' All which did not keep him within doors, or from his ordinary walks. Which seeming apathy brought him letters and intelligences, that he was stupid, a dull beast, and his name should be Blind Bayard.

'Once a trap was laid for him by way of sham-plot. An eminent busy party-man, with whom he had concerns depending, came to him with a proposition from the whole adverse party, which was, that, if he would wave my lord mayor's appointment, and take the election from the common hall, he should be chosen by them, and all the charge of his shrievalty should also be defrayed by that party, who would raise the money amongst them to do it. This he rejected with indignation and scorn; and, being one very much inclined to communicate truths, made no bones of telling this passage in all companies, so far as to declare the full import of the proposition made him, but not by whom: and so, taking wind, it flew about the city, and proved very prejudicial to the measures of the faction at that time. For which cause they were wonderfully angry; and once, at a public feast in the city, an eminent leader, by agreement of the party, (as I suppose) publicly charged him to name his author, adding that, if he did not, the whole story would be accounted no better than his own invention. He, being thus attacked, freely and readily affirmed the passage to be true; and, as for naming the person that made the offer, for reasons relating to the person himself, he was not forward to do; but, if they insisted on it, he would instantly declare, before all that company, who it was. This put a stop to the discourse, and no word more was said of it; for they knew he was not used to be worse than his word; which, perhaps, of a bad business, might make it worse. I knew then that it was one Faircloth, a formal Presbyterian usurer, and a great intriguer. His son was then mercantile servant to Mr. North, and was afterwards settled by him in his factory house at Constantinople. That person had an easy access to him, and brought the proposition, which was a mere snare; for, if he had inclined to accept it, the report had flown about that he was selling himself to the other side for money; and that was all the party intended by the experiment. But all circumstances conspired to shew the implacable rage that possessed the faction at the nomination of him who, of the whole freedom, was the only person qualified to resist them. His character and circumstances were as if they had been cast in a mould for that purpose: so exactly were they formed for an opposition and counter-work to the whole game of the faction: and so much fiercer were they in all their methods of proceeding. And accordingly, they provided a mighty muster of their livery party, against the 24th of June next, at Guildhall: the other side provided also the greatest strength of voices they could make. The candidates of the latter were North and one Box, the former for confirmation, and the other for election: and the party had Papilion and Dubois, both to be chosen in opposition to the lord mayor's pretension, which they were determined to fly in the face of and reject. Thus stood the preparatives against the day of election.

"Now the manner of proceeding in these cases, at the common hall, is very particular, and, as was touched, consonant to the claim of my lord mayor. For he, with his aldermen, is present only at the opening of the court, and question of confirmation, and then they retire; which is to the end that the common hall might be free in choosing one of themselves, which freedom the presence of the mayor might impeach. Now in case the floor will not confirm the mayor's sheriff, he is not bound to continue them any longer, but may dissolve or adjourn them, or not agree to any thing they do. That, which the faction insisted on, carried a fallacy throughout; for, said they, the authority, given by the choice, is from the city, and the act of the lord mayor is not the act of the city; and so they harped upon the word Choose! which, said they, did not belong to the lord mayor but to the city. All that was granted, and also that the new sheriffs had no authority till the whole city in common hall agreed to them. And, however the lord mayor nominates, it is not pretended to be a choice, or by virtue of a power

invested, as granted by him, nor that it stands for any thing if the common hall doth not confirm. But then the lord mayor is not bound to concur in any choice they shall make, till they nominate to him persons that he shall think fit to trust; and he is no more bound to agree with them than they with him: and so entered the custom by way of composition or expedient (as I said before) which if they fly from on their parts, he betakes to his negative voice on his part. But yet the abuse of the words Choice! Nomination! Right! and Authority! all which being applied to the city exclusive of the lord mayor, sunk so with the citizens, that few of them could bring their heads to a true state or distinction of the matter. For they looked upon the common hall as an assembly of commons with a speaker, as if he had only a presidentship; whereas it is rather like a parliament with a sovereign, and, instead of a casting voice, as they call it, there was a negative voice, which alters the matter strangely. So very difficult was it to get the citizens to comprehend the reason and distinction upon which the lord mayor's right depended; and it went farther with them that the custom had been so, and an act of common council had declared it, than that there was any consonance or reason at all for it.

"At the day of election, June 24, 1682, the party, after the way of their predecessors of old Rome, had possessed the Forum, that is the floor of Guildhall, so that the other side could not croud in; for the livery had been so much encreased that the hall would scarce hold half of them. This bred a sort of confusion at first, with the elbowing and thrusting to get room, and not without a deal of snarling and scolding amongst them. Those persons, that could get upon the hustings, as I did, and from thence viewed the floor below, had a prospect as if the hall had been paved with faces, and full of eyes sparkling, not unpleasant to observe. When the lord mayor and aldermen were come, the common officers put the question of confirmation; and then, in a trice, those, that were for it, held up their hands (for that is the signal of assent) with arms and fingers distended, all in a continual motion together, which made an odd spectacle: but the dissenters, who were much the greater number, instead of holding up hands, screwed their faces into numberless variety of No's! in such a sour way, and with so much noise, that any one would have thought all of them had, in the same instant of time, been possessed with some malign spirit that convulsed their visages in that manner. This was taken for a refusal, as it was; so the lord mayor and his court retired to consider what was to be done; and, as he passed, with the sword before him, through the croud, we could observe the items of fury given by fists and faces at him, as folks are apt to do when they threaten. This promenade was done more than once, to see if the hall would come to their wits, and agree to confirm; but the party were no changelings, every trial came off rather worse than better. At length the lord mayor adjourned the hall, and no more was done that day. And because great part of the dispute fell upon that adjournment of my lord mayor's, and there was notable stir about it, I shall add somewhat relating to it.

'When the hall was at a full stop, for refusing to confirm, and the court of aldermen was sitting, the citizens were admitted to come in, and at the bar, to offer what they thought fit to the court, each party for his side; and notable wrangling there was. My lord mayor was advised to adjourn the hall, the faction opposed, saying, 'he had not 'power to break up the assembly till the 'election was finished.' In those days, nothing could be so much contrary to law and common sense, which they would not affirm to serve their turn; of which I may have touched some instances, but this was an egregious one. All the aldermen but five (for no more were factious) advised to adjourn; and so the matter rested in dispute amongst them a good while. At length, one of the dissenters moved the lord mayor, that they might bring counsel to argue, who would satisfy his lordship he had not power to adjourn: The other side agreed, so as they might send for counsel to argue on their side, who would demonstrate the contrary. It was upon this first day that counsel were brought, but the author makes an hearing of counsel to have been upon another day; and, not having access to original entries, I do not dispute; but, as to the matter I here relate, I am very sure, and, for times, refer to the proper registers. It may be that counsel was heard afterwards at my lord mayor's house privately, when I was not in the way; for the question continued; so as, for more hearings than one, I contend not. In the interim, before the counsel came, the court was diverted by the partisans on both sides, with numerous complaints of each other's outrages and irregularities, which were exaggerated with great violence of talk; And, all that while, the poor lord mayor sat as one almost insensible; so full was he of doubts and fears. But it appeared, by his actions afterwards, that he was firmly resolved in his mind to assert his right, so long as the court of aldermen stood by him with their advice, and the court at Whitehall sustained him against injuries that might be done him.

"This was Midsummer work indeed, extreme hot and dusty, and the partisans strangely disordered every way with crouding, bawling, sweating, and dust; all full of anger, zeal, and filth in their faces; they ran about up and down stairs, so that any one, not better informed, would have thought the place rather an huge Bedlam, than a meeting for

civil business. And yet, under such an awkward face of affairs as this was, the fate of the English government and monarchy depended but too much on the event of so decent an assembly. And indeed it was accordingly understood; for it is not small matters that will raise such furious hurricane doings as here was. And the court was aware; for care was taken that divers considerable persons, some of the council, should be near at hand to observe the proceeding, support the spirits of the lord mayor, and encourage the loyal citizens, and that they might have recourse and directions as occasions emerged; but this was known to very few. And, on the other side, factious lords and others attended that had nothing to do there. It may be wondered that such a contest as this, considering also what was at the bottom, did not run on to blood; but, as at the tumults, so here, the temper of the English appeared, which I may call a native humanity, though the foreigners term it dulness and phlegm. They have an aversion to civil homicide, but, in war, are as free with lives as the best of them; and yet, even there, the same humor appears, for no command will make the English refuse quarter, or kill in cold blood. But then as for faction, crowd, tumult, and brawl, let them alone; it is a sort of sport, or lust of change that makes them delight to see high things fall, and their government in distress. In which matters I may commend their temper, but not their wisdom.

"But digressions apart, and to return to the trial of this profound question of the lord mayor's power to adjourn; First Mr Pollexfen, argued *contra*; and he built only on a parallel he made between the common hall of the city and the ordinary county courts, held by the sheriffs of counties; and so the common hall must be the city county court, and the lord mayor be as the sheriff, only to preside but not to judge, because, in all those courts, the suitors are judges, and here the livery men are the suitors, and, without their consent, the lord mayor can no more adjourn the court, than the sheriff of a county; but it must be done by the livery; and all this he confirmed by the place where the Hustings, which is the court of pleas for lands in the city, is kept. On the other side sir Robert Sawyer, the attorney general, came to answer all this obvious nonsense. First he shewed the place signified nothing to the jurisdiction; for burgesses to the parliament for Westminster are often chosen in the King's-bench court, but it is not the jurisdiction of the King's-bench that chooses: Then, that this assembly, called the common hall, is so far from being like a county court, that it is no court at all, nor hath any manner of jurisdiction; that it was no other but a private meeting of the corporation of the city for pure corporation work, the choosing officers. And the lord mayor being head of the corporation, without whom no assembly of the corporate body could subsist, or corporate act be done, he was also head of this assembly, to call, adjourn or dissolve it, as he thought fit. And concluded that all the other side had alledged, of county sheriffs, suitors, judges, &c. was all romance and invention, and in no respect applicable to this assembly. All this while, the partisans were raging about the hall and rooms; and divers (out of friendship as was pretended) gave hints that my lord mayor would not be safe, if he went down to adjourn them; and that was to fright him from taking a resolution so to do; and they scarce believed he would dare to do it. At length, it becoming necessary to terminate the matter one way or other, the lord mayor, on a sudden, and unexpectedly, rose up and bid the officer take up his sword and go down, saying, as he went off, If I die I die. And, passing the crowd, took his seat upon the Hustings, and commanded the common serjeant to adjourn the hall to a time, which was done, but scarce heard for the hideous noise that was made. After this, the lord mayor and the rest, that so thought fit, went their several ways in peace; and there ended this troublesome scene of a Midsummer's day's expectation

'It was very strange to observe the impudence of these men of the faction in London, who still persisted in the senseless pretence that the lord mayor could not adjourn the common hall, though, to every one's capacity, it was solemnly, not only confuted but shamed: and they would not quit a scruple to ease my lord mayor, but, to their false pretences, added menaces. For, as he passed to the adjournment, there was a terrible rage of faces made at him, as if an endiablement had possessed them all. When the mayor and officers were gone, the two precious sheriffs, Pilkington and Shute, with some livery men of their party, thought fit not to obey the lord mayor's adjournment, but, by themselves and all their own authority, held on the corporation assembly, or the common hall, as they then called it, and there they proceeded to continue the election by setting up a poll; and afterwards they finally declared the choice to have fallen upon Papilion and Dubois, as will be shewed. Here appeared an headstrong disposition, but not a grain of judgment, in those who governed the sheriffs. They little understood the nature of the sheriffs office, who took the Vicecomites to have any authority at all in the corporation affairs, or to be officers at all of the corporation. It is true the corporation have a right, by charter, to nominate them; but, being nominated, they are the king's officers, as was said, to attend on the authority of the city, and keep peace, as all sheriffs are attendant upon all authorities in jurisdiction derived from the crown. A body politic presents to a living; the incumbent is not, by that, a servant to

the body, as if he were their chaplain Therefore this act of the sheriffs, in setting up themselves to preside in a corporate assembly, not only without, but against, the order of the head, and in direct opposition to him, was the most audacious blunder that ever was known. But then the actual endeavour thereby to impose, not only upon the city of London but upon the king himself, officers of the peace, and royal revenue in the city, was not only foolish but desperate, as done by madmen, and could be made good by nothing but sword in hand. And what could be expected, but that the government should resent it with all possible rigour, as for an offence next to high-treason? Therefore one may conclude that it was not blindness only that caused this detestable pass to be made, so much against common sense, but some dismal reserves which they had and relied on, to divert the obvious consequences, as must fall for daring to usurp so great a power. But, whatsoever those were, they failed at this time; for, upon information above, upon oath, of this fact, warrants issued from the king in council immediately to take up the two sheriffs and their complices, in order to be prosecuted at law for this extraordinary and dangerous riot. And, if they or their party had made any stirs or resistance there was force enough at hand to have executed the warrants effectually; and for that reason the arrest was submitted to.

"If one would consider this affair in the mildest terms, it may be judged that the faction relied chiefly upon the parliament, which was expected to be soon called and to meet, for justifying them and criminating the other party. For they, as was noted, had calculates of elections, and knew, by their rule of progression, how much the next sessions of parliament must be more averse to the court than the last was: and so they concluded whatever they did, must, in the end, come right. This is the model of Forty One exactly: those times began with like brawls in the city, and the same injustices and oppression were intended to be acted over again. But it is so far certain, viz. that in this view, they were open and clear; making no ceremony of declaring what the next parliament was to inflict upon their adversaries, whatever else they might hold undeclared in petto. And their perpetual harping upon this string, and the proceedings against the abhorrers being recent, had really made the people generally believe that things would happen as they said, and, right or wrong, they should crush all their opposers. But, in the mean time, we must a little question their policy with respect to the persons active at present, in both enraging, and then giving the government in possession (if I may so term it) such apparent advantage of them; and so, taking a miserable defensive, depend upon an after game in a cause not likely, in one and the same age, to run upon the same chances. But, whatever were their politic reserves, the government did not take these doings for boys play, as squibs and crackers, but as a bold attempt upon the authority of the city and nation, and very necessary to be made exemplary. Among those that were committed, there were some not citizens, but party men at large, and of no small account; as for instance, the lord Grey of Werk. These did not attend where they had nothing to do, in order to have nothing to do; they were screwing up matters to their model of public disturbances, as consequences shewed. These persons went to the Tower, and, upon Habeas Corpus were bailed, and afterward prosecuted by an information; whereupon the issue was tried in the city, and, upon a long and clear evidence, the parties were convict and fined; but, considering the nature of the offence, and quality of the persons, very moderately. They were forced to pay their fines, but were so sanguine to look upon them as money put out to interest to be repaid principal, interest, and charges out of the estates of their adversaries by an after-game, as I shall shew. But I have run this business of the audacious riot to this end here; but we shall hear more of it as we go along.

'As soon as the sheriff were come out upon bail, like men syderated to folly, they took up the game where they left, and, at a day of adjournment of the common law, resumed their poll by themselves, at the other end of the hall, apart from the lord-mayor's assembly. For he with the court of aldermen, was sometimes upon the hustings, and sometimes in the court, puzzled with the difficulties in settling this matter of the choice of sheriffs; and, before any thing was done, the then sheriffs came to a close, and, in the hall, publicly declared the election to fall upon Papilion and Dubois; that is to say, they, as mayor, aldermen and citizens of London, had deposed the lord-mayor and aldermen, and, by a party, declared an act of the whole corporation. But now there was a new difficulty started, and my lord-mayor was attacked with new doubts and scruples; for, said they, 'Here are two sheriffs declared, who are in possession of their election, and, whatever you might have done before, you cannot make a super-election, and thereby set up anti-sheriffs of London.' And, in very sober earnest, most indifferent people, whose heads did not lie for distinguishing matters of order and constitution, thought that the city sheriffs, in taking a poll, were not ministers but judges of the election, and believed that now the lord-mayor's case was much worse than before; and so was the current conceit of the town. During this interval, the lord-mayor was sent for, or went of himself, to court, and appeared before the king in coun-

cil, where an account was given to his majesty of the trouble the city was in about the election of sheriffs upon the declaration these men had made of an election. All the learned at the board, and the king's attorney, declared that the proceeding of the sheriffs was no act of the body, but, as to legal effect, absolutely null; but yet criminal, as being done without and against lawful authority. And that the lord-mayor, the head of the body that was to elect, could alone direct and declare the election; and that, at the next meeting of the common-hall, he ought to proceed *de integro*, as if nothing had been done; as their use is when sheriffs, chosen, fine off. The question depended wholly upon that of my lord-mayor's power to adjourn the common hall; and sir John Moore was extremely dissatisfied and uneasy about that, being what divers citizens had told him he could not do. The lord chief justice North, a privy counsellor, was so far from making any doubt of that, that he said to my lord-mayor, he need not be at all concerned; for the question was frivolous and impudent, or to that effect. Thereupon sir John Moore crept towards the place where his lordship sat, and with a most submiss countenance, desired to know of his lordship if he would be pleased to give it under his hand, and, contrary to the expectation of all present, his lordship said yes; and, taking the pen and paper before him, wrote his opinion, that the lord-mayor had power to adjourn the common hall to what time and place in the city he thought fit, or to that effect, and, setting his hand to it, gave it to sir John Moore. Now the courtiers, that were more used to sneakers, than to men of clear courage in a clear cause, expected his lordship would have shuffled off this setting his hand; but the readiness of doing it very much confirmed sir John Moor, and exceedingly pleased the king.

" But, for the better countenance of sir John Moore, it was thought fit that his majesty in council should order him to do his duty in the city; and thereupon an order was made that he should proceed to the election of sheriffs, according to the ancient usages of the city. This order the author inserts, in the very words, into his History, intending that it should seem as if the city affairs were governed wholly at Whitehall: whereas nothing is more usual than for the king, by order of proclamation, to enforce laws, and require magistrates to do their duty accordingly; and this was no more. Then, at the day, to which the common hall was adjourned, the faction threw up and made no appearance, having, as they thought, and intended to insist upon, sheriffs of their own; so the question of confirmation was put and carried affirmatively, and then, for the election of sir Ralph Box, which was carried also. But Box was frighted at the double election, for so it was termed, and the disputes with these Anti-sheriffs, as might happen, and so fined off; and then sir Peter Rich was chosen, and the election declared for North and Rich. It was wondered at by many why the faction did not interpose to trouble this latter election, and, as they might have one, joined one of their own party; for it might (and really it did so) happen that a friend in a corner had been of great service to them. But they considered, wisely enough, that it was better to stand the after-game in parliament, which would make clear work, and, in the mean time, not hurt their title to two sheriffs by coming in for one; and, if they did, their officer would have a sour time of it, having the court, the law, and the officers against them, for the latter would certainly obey my lord mayor's sheriff. Besides, North was a person so determined and resolute, and withal so well advised and supported, that nothing but blows would be got by contest with him. But all this was reasoning in the dark, for the Rye Conspiracy was scarce formed; and they dreamt nothing of such a discovery to come upon their party, as followed; else they would have had a friend in a corner, to be a spy, at least, in the enemies quarters. But, as things were understood, the next point was for the old sheriffs to get clear out of their office. Their courage did not serve them to refuse delivering over the gaols by indenture to North and Rich, as the way is; not to indent with their own anti-sheriffs; for either way had been an escape of the prisoners in execution that had charged them deep: Therefore they made a virtue of necessity, and were glad to seal to North and Rich, who entered upon their office in the usual forms. And so ended this (to after-times inconceivable) hurry in London about the shrieval election in 1682.

" And now, before I enter upon any consequences, I will run over the author's account of the matter, which is very brief, but not so brief as malicious; for his aim throughout is to make such a sham representation of it, as the whole proceeding may appear one continued act of arbitrary power, and unrighteous oppression of the city freedoms. It seems that, after Bethel and Cornish, the sheriffs of the year 1680, of scandalous memory, the loyal citizens, the author's court party, instructed, by their behaviour, what was to be expected if the same faction, that set up them, should set up others as bad, made all the strength they could to oppose the choice of Pilkington and Shute, but in vain; and the author justifies the faction for going on at that rate, saying, 'their lives and liberties depended upon that 'choice.' He must think sure that his friends knew themselves obnoxious and deserving to be hanged, or else that the court had resolved, right or wrong, to hang them; how else came that choice to be so fatal beyond any other, as if Mrs. Atropos waited to

cut all their threads? But it seems the cit began to shew a loyal disposition, and, to the credit of youth, who are sometimes mistaken, but ever forwardest in actions of (presupposed) general good, it fell out so in the city that almost all the apprentices were loyal, and had a fancy to make a feast, and entertain some of the court; whereupon venison was sent them from the king's parks, and some great men dined with them. This the author calls a meaner condescension, to which he adds this dutiful sentence, It was thought it was no less than encouraging servants against their masters. The faction, and their scribe here, had reason to be offended that the servants should presume to be honester than their masters; and that it should not be in the power of the cankered old crabs of the faction to corrupt the youth of the city, whereby to provide a seditious succession: As if young men, commonly sons of good families, were bound out apprentices to treason, as a mystery in which they were to work for their masters and learn for themselves. But we must not forget the mystery of king Charles's greater condescension to stir up mischief between masters and servants, by setting up the latter. Sure there was some great condescention which was exceeded by this; and I find it was after the election of Pilkington and Shute, when the city invited the king to dinner, and the sheriffs went on the errand. The king, having no quarrel to the city, which, excepting the majority of the livery, were generally loyal and active against the faction, graciously accepted the invitation; but withal was pleased to add, though brought by such unwelcome persons. This the author makes a low pique in a king, that is to honour his friends, and disgrace his enemies. Wonderful invention!

"But, to return to our Midsummer work, all the author's account of the action in 1682, momentous as it was to the public, falls into one short fallacious sentence. 'The court 'was very solicitous for the choice of new 'sheriffs of London and Middlesex, and 'earnestly recommended North and Box.' This, as it is expressed, is false: For first, how could the court be solicitous for the choice of new sheriffs, when the choice was to be of course, and the old could not continue? And then there came no recommendations from the court to the city; and, lastly, North was not upon the foot of choice, but confirmation. If he would have said true, he would have told us that the court were solicitous to have the Ignoramus faction excluded, and indifferent sheriffs chose, and that the loyallists of all sorts set up Box to stand with North that was drank to. And so the people proceeded as usual upon contested elections, when the distinction was of loyal and Ignoramus. But, says he, the hearts of the citizens were for Papilion and Dubois. This is false also: And the cheat lies in the word citizens, for that stands here, as, on other like occasions, the word people, a part for the whole. For a party rabble is always his people, so here a prevailing party of a packed livery are the citizens forsooth; although, even of them, the value of the loyal party exceeded the tale on the opposite side. But it may be affirmed of the citizens, in general, that, had they been polled, there had been ten for one against the faction at that time. And that was seen in the choice of aldermen, for, of about 20, there was but 5 with the faction; and those magistrates were chosen by the inhabitants at large, in the Wardmote court. So just an account of the citizens have we here! But what comes now? 'This occasioned a 'riotous controversy, the lord-mayor com'plying with the court, and the old sheriffs 'resolving to assert the rights of the city.' Is not this the narrow of the dispute? What can be the meaning, but the court and the lord-mayor, by force and violence, set up sheriffs, and would allow the city no election at all? We are got beyond the recommendation of the court; that consisted very well with a free election without tumult, though my lord-mayor with his influence, took the court side; so the matter must be right down force, as I said before, that should stir up the sheriffs to assert the city's right to elect. For he takes no notice of the distinction of confirmation and election, nor states the pretences of the party, as a just writer should. Nor was there any riot at all, but that of the sheriffs acting unwarrantably, as was shewed.

"But he goes on. 'Hence, on the election 'day, a great noise and clamour was made; 'the Whig party being more numerous, the 'lord-mayor adjourned the common hall' To set aside the great news he tells us, that, at a popular contested election, there was a great noise and clamour; we must not allow him his pregnant word hence, that carries an assertion of a force upon the city. For it refers to the former words, which plainly imply it, and, consequently, is a very great falsity; for, at most, the business was the form of the election, which the two parties contended upon. But that, which follows, is an artificial and solemn foubery. The Whig party being most, the lord-mayor adjourned, &c. Doth not that affirm that the lord-mayor, finding the numbers against him upon the square at the election, unjustly adjourned, &c. that they might not carry it. Which is the most egregious falsity; for he adjourned, because the hall would not do him justice by confirmation, which was his right; nor did any law oblige him to agree any thing to them who would not do him common justice. And must any one, a stranger to this affair, think this good lord-mayor, one of the most treacherous and tyrannous men in the world, for stopping a choice because his

side had fewest voices? O! that the Whig party had never really and truly done that which this writer falsely charges upon the good sir John Moor! But we must not stop here. But the two sheriffs, thinking that to be an arbitrary act for interrupting a regular election, went on with the poll. Who made them, that are officers of the crown, and not of the corporation, judges to say what was arbitrary and regular in the proceedings of the lord-mayor, aldermen, and citizens *corporaliter congregati*? It is just as if one should say, the sheriff, at the assizes, thought that the judges departing before all business was done, was an arbitrary act; so he continued the assizes by himself. I suppose some learned counsel hath informed this author that, if a magistrate doth not please the Whig party, he acts arbitrarily.

"After this the author touches upon the commitment by warrant signed by 24 of the privy council; and that counsel was heard upon the adjournment, of some of the following proceedings, down to the double declaration of the election, and there says, But the proceeding (on the lord-mayor's part) was thought to be by no means usual; for Dudley North, esq. was only put up to be confirmed, as being duly elected by the lord-mayor. Here is so much falsity and so prevaricated, one knows not where to begin. First, the proceeding, as in truth it was, (which is here falsely related) was by all means usual, and so agreed by the adversaries bating a few discontinuances; only they were pleased to call that usage an usurpation. Then next, here is no account of this mysterious 'confirmed,' but by my lord-mayor 'duly elected,' which is false also; for the lord-mayor did not pretend to elect, but to point out a person whom (if elected) he should approve, as hath been shewed. So here is a scandalous account of the proceeding, as far as the author intends it should be understood; he conceals the whole material truth of it; and that is a worse cheat than all the other misrepresentation. For he hath suppressed the whole story of the custom and ceremony of drinking, with the reason; which is a subject, not only necessary to be explained in the history of this crisis, but is, of itself, as remarkable as any thing that can be related. If he had pleased he might have passed by the whole matter, and (as was said of the tumultuating Jews about questions of their law, so of the citizens, about questions of their customs) we had indulged him on account of brevity. But he, with his thinkings, and 'tis thoughts, comes round to a decision, and condemns the lord mayor and loyal citizens for colleaguers with the Court, to usurp arbitrarily the rights of the city, and rob them of their election; while the good Ignoramus sheriff, and his Whigs, with a public spirited resolution, stood up and maintained the city rights against those traditorian Court slaves. And, all this while, no mortal can collect from a word of fact, so as to guess what the matter of these great stirs was. And, from a comparison of his words with the fact, all this appears to be of itself, not only false but maliciously tincted with words and names to look like truth; and so pretending to a relation, is unintelligible and dark, to the intent that folks may imagine what is not: such is our Complete History! Let the following passage speak. "The mayor heard the lawyers argue the regularity of the late adjournment, but coming to no resolution, the Court was again adjourned." Here is falsity and contradiction; for the point, upon the first arguing, was resolved, and the hall, thereupon adjourned: and saying here that the Court was again adjourned, admits a resolution; for whether it might be done, or not, was the question. But the author is not pleased, though the point was cleared to the satisfaction of all, to have it determined, but rather remain a moot point in his History, or yet rather be condemned by virtue of ''tis thought.' The rest of this paragraph trifles and shuffles in matters not worth notice; and then he concludes that Mr. Dudley North was sworn upon the bustings, which is false; for he was not there, nor sworn till a good while after that he was sent for to the court of aldermen, and commanded to enter into bonds for taking the office upon him. So this shot, made though at nothing, was by guess, and flying.

I have now given a representation of the Author's falsities and concealments about this momentous change of the city, and, consequently, of the whole nation. He hath afforded us only a few sideling and libellous sentences, and for that reason, affectedly dark and imperfect; suppressing, as I noted, all the true motives and dependances belonging to the proceeding. He would have the business look black on the Court side, having occasion for abundance of such arbitrary doings, as he labours to dress them out, in order to extenuate the ensuing rebellion; which is the true reason for this his, otherwise, unaccountable conduct. We have had already much, but shall have more, of the like design afterwards. But, as to this transaction, that I might clear up his mists and mishapes of things, I thought it necessary to make an entire relation of my own, which I have done out of pure memory; and think myself not wholly unqualified for it, being in those days curious and active, and seldom absent at any of the turns. But having no thought of ever being provoked, as I am by these, worse than, falsities of the author, to recollect particularly matters that, in those times, I looked after chiefly for diversion, I kept no journal, or notes of times and particularities as they succeeded. Nor have I access to any offices where I might gather from the

originals, that is orders, declarations, and the like, what is needful for a just register. Therefore I am sensible that many punctualities are here wanting, which I wish I could supply. But, as for the gross steps, and the matter of fact, I am secure of having done justice; for I well observed them, and, I think, shall never forget the material part." Examen, p. 595.

Concerning these transactions it may reasonably be conjectured that the ordinary weight of Roger North's political partiality was aggravated by the consanguinity between him and sir Dudley North.

Of the same occurrences, the following passages, extracted from Narcissus Luttrell's MS. "Brief Historical Relation of State Affairs," in the Library of All Souls' college, Oxford, furnish a simple and apparently impartial narrative, the effect of which is enhanced by contrast with the party vehemence of North's representations, and the elaborate affectation of his forced and declamatory style:

"June, 1681. The 24th was the day for the election of sheriffs and officers for the city of London, the Livery-men of the several companies appeared in an extraordinary manner at the Guild Hall: the lord mayor and court of aldermen being come upon the Hustings they proceeded to the election; the persons in nomination for sheriffs were Mr. alderman Pilkington, and Mr. Samuel Shute, Mr. Ralph Box and Mr. Humphry Nicolson; Mr. Pilkington was first put up, who having apparently the majority of voices, was declared duly elected; Mr Shute with some contest was put up next, and then Mr. Box, but Mr. Shute carried it by much to appearance, yet those that were for Mr. Box demanded a poll, which was granted and clerks appointed, and accordingly the poll began which ended that day, and Pilkington and Shute carried it by hundreds of voices.—Sir Thomas Player was then also continued chamberlain of London unanimously.—There was a very great appearance of Liverymen, and the Court had made what interest they could that they might get the persons set up by them (Box and Nicolson) chosen for sheriffs The poll was closed the 24th at night, and the 27th was a common hall again for declaring the sheriffs; and on the poll alderman Pilkington had 3144, Mr. Shute 2244, Mr. Box 1,266, and Mr. Nicolson 84; so that alderman Pilkington and Mr. Shute were declared duly elected."*

"1682, June. The 24th being the usual day for electing of sheriffs for the city of London, many of the livery men appeared at Guildhall; One party crying up North and Box and the other Dubois and Papillion; but a poll being desired and granted, it lasted for some hours; and then towards the evening the lord mayor came and dismissed the court, ordering them to appear on Tuesday next; notwithstanding which the sheriffs still held on the court, and the Whig party cried out a Hall! a Hall! and continued on the poll, and there was some kind of riot and tumult committed in the poll; But at last the sheriffs also adjourned the court till Tuesday next at nine of the clock.

"But the 25th the lord mayor went and complained to his majesty against the sheriffs, who being summoned to appear at the council, they did accordingly the 26th; and being thought to be promoters and upholders of a riot; they were committed by order of council to the Tower, and accordingly conducted thither in their coaches by four yeomen of the Guards, only through the city.

"It is observable in this election, that the lord mayor insisted on his right of chusing one of the sheriffs himself by drinking to him, which he had done to Mr. North; but this the greater part of the common-hall were against, and would not confirm him.

"In the transaction of the late election on Midsummer-day of the sheriffs, some things are remarkable; as first the lord mayor's precept to the several companies runs in an unusual form, viz. as well for the confirmation of the person who was by him chosen to be one of the sheriffs, &c. as for the election of the other of the said sheriffs, &c.; whereas former summons was to the members to meet and chuse sheriffs, and then when this person was put up, it was only for confirmation, but this the common-hall was absolutely against, and cried, No confirmation, no confirmation! The common hall also returned thanks to the two present sheriffs for the faithful discharge of their office.

"June 27th. The court of King's Bench granted a Habeas Corpus, to bring up the

* As to this election, bishop Kennett, vol. 3, p. 391, 2nd ed. says, "The king was resolved to express his displeasure at it, and therefore when, on October 13, sir George Treby and these two sheriffs were sent to invite his majesty in the name of the city to do them the honour of dining at Guildhall on the 28th, his majesty gave them this rebuke: 'Mr. Recorder, an invitation from my lord mayor and 'the city is very acceptable to me; and to shew 'that it is so, notwithstanding that it is brought 'by messengers that are so unwelcome to me as 'these two sheriffs are, yet I accept it.' "His majesty," proceeds the bishop, "had before condescended to a meaner thing by distinguishing the loyal apprentices of London, and giving a brace of bucks for a dinner at Sadler's Hall on August 4th, and sending many of the principal courtiers to dine with them, directing his son, the duke of Grafton, to be one of the stewards for another year: all which was thought no less than to encourage servants to oppose their masters."

bodies of Mr. Pilkington and Mr. Shute, from the Tower, which was returnable immediately; and the Lieutenant of the Tower being served therewith, thought fit to take no notice thereof.

"The 30th the sheriffs of London, Mr. Pilkington and Mr. Shute were brought up from the Tower of London to the court of King's Bench on a second Habeas Corpus, and desired by their counsel to be bailed; but Mr. Attorney General exhibiting an information then in court against them for the said riot, for which they were committed, they pleaded first to it, Not Guilty (in which said information there were about forty other persons mentioned as rioters; as alderman Henry Cornish, sir Thomas Gold, sir John Shorter, lord Grey of Wark, alderman Ellis, John Trenchard, esq. and others) then they were admitted to bail, who were Mr. James Hayes, Mr. Michael Godfrey, Mr. Benjamin Godfrey, and Mr. John Bauden; the principals were bound in 2,000*l.* a piece, and the bail in 1,000*l.* each, at desire of the Attorney General.

"July 5th. The same day being the last day of the term, the sheriffs appeared early at the court of King's Bench, and had their appearance recorded.—And it being the day appointed for the election of sheriffs according to the late adjournment by the lord mayor, the sheriffs appeared on the hustings, and the citizens in great numbers, but the lord mayor being indisposed, Mr. Recorder, by his lordship's order, declared it was his lordship's desire that the poll should be adjourned till Friday the 7th; whereupon the sheriffs demanding of the common-hall if they were willing to defer it, the major part were against it, so they proceeded in the poll for some hours; which being finished and cast up; the common-hall insisting to have the poll declared, the sheriffs did accordingly, Mr. North 1,557, Mr. Box 1,609, Mr. Papillion 2,754, and Mr. Dubois 2,709; which two last having the majority were declared sheriffs for the year ensuing; and their proceedings were ordered to be recorded by Mr. Town-clerk, and then the common-hall broke up: During this day's proceedings, four companies of the trained bands were on the guard.

"The 7th, the lord mayor, some of the aldermen, and the citizens on that side met, early at Guild-hall (notwithstanding the proceedings on Wednesday) to proceed on the poll; of which the other party having notice, lest they should be stript of their privileges, came to Guild-hall in great numbers; and a dispute arising between the mayor and aldermen about his pretended adjournment, some lawyers were sent for to decide it, sir George Jefferys and Mr. Sanders in behalf of the lord mayor, and Mr. Williams and Mr. Pollexfen for the sheriffs, who debated the matter, but coming to no result, the lord mayor further adjourned the court till this day seven-night being the 14th.

"The 14th also the common hall met in great numbers at Guild-hall: the lord mayor and aldermen being come upon the Hustings. His majesty's order in council was read, and then the lord mayor insisted on his privilege, and declared Mr. North to be sheriff, which the common hall would by no means admit, but cried out no North, no North, no confirmation; but a Papillion and Dubois: then the sheriffs telling the common-hall, they were by his majesty's order to poll anew (salvo jure to the last poll) they begun to proceed at four in the afternoon to poll for all four, which the lord mayor hearing of came and adjourned the poll again till to-morrow seven of the clock.

"The 15th according to yesterday's adjournment by the lord mayor, the common hall assembled and they proceeded to the poll: the sheriffs had books to take it, as also some appointed by the lord mayor took it; the sheriffs would poll for all four, the lord mayor for but three, saying North was already chosen (though it is said his lordship consented to poll for all four, but afterwards thought fit to alter his mind,) the books being closed and cast up, the sheriffs came upon the hustings and declared how it was in the books, North 107, Box 173, Papillion 2,482, Dubois 2,481; and against confirmation 2,414: So that Papillion and Dubois were again declared elected sheriffs, at which there was a great shout: But the lord mayor and some of the aldermen came afterward on the hustings, and declared Box to be the other sheriff as having the majority, viz. 1,244 in his book, and Papillion and Dubois but 60; after which the sheriffs came again upon the Hustings, and declared Papillion and Dubois sheriffs. What will be the issue hereof time must shew; Some persons are strangely exasperated against the lord mayor, and most blame him for the unusual precept that summoned the common hall, such an one having been never known before.

"The affair of the sheriffs is that which causes great differences; the Whig-party thinking the lord mayor hath done them injury, have brought actions of the case against his lordship which increase in number every day; they say that the sheriffs were ever the proper managers of the poll, that the lord mayor was willing to poll for all four, until a certain minister of state was with him, (sir Leoline Jenkins) that in a little time there will be a common council called, and then they think to receive satisfaction in their rights; but if the lord mayor shall proceed to swear North and Box, they think they have power to turn them out again on Michaelmas-day; if all these fail, they are resolved to proceed by way of mandamus, act of the court of King's bench, to try the issue the next term.

"The 27th being a court of aldermen, there

was a numerous appearance of the livery men at Guildhall, to have the lord mayor's answer in relation to the petition formerly delivered concerning Mr. Papillion and Mr. Dubois their being called to hold sheriffs for the year ensuing; some of them being called in, his lordship's answer was read, that the court would take care such persons should be sheriffs who were legally elected, as also of the rights of the chair and of the whole city, and if things were done otherwise, the law was open; Some of the livery men attempting to reply, that this was no answer, his lordship bid them forbear and be gone, which they not doing presently, they were commanded in the king's name to depart; and then the court adjourned till after Bartholomew tide.

"September, 1682. On the 5th was held a court of aldermen at Guildhall, where divers citizens attended and delivered another petition to the court, to the same same substance as the former, that Mr. Papillion and Mr. Dubois being legally chosen sheriffs for the year ensuing, they demanded as their right, and as the oath of the lord mayor and aldermen obliged them also, that they might be summoned to seal their bonds to hold the said office or fine off; then they were ordered to withdraw, during which time Mr. Box was called in: and after the citizens were re-admitted, and the lord mayor told them their petition had been read, and was to the same effect as some formerly delivered; and that Mr. Box had been since called to accept the office of sheriff, but that he had submitted to a fine, so that now they should have another common hall to elect another sheriff to serve with Mr. North, to which some replied, they had already chosen two sheriffs, and would adhere to the first choice, and did desire no more common halls, saying there had been too many already about this affair, at some of which several received their death; On which his lordship commanded them in the king's name to withdraw, or they should be looked upon as tumultuous.

"Mr. Box's fining off hath caused much discourse, the Tories blaming him on the one side, and the Whigs gathering heart on the other, promising themselves success; but the more moderate persons like not these proceedings, dreading the ill consequences that such heats and divisions may occasion.

"The 12th was a court of aldermen held at Guildhall, where many citizens attending were called in, who presented another paper to the Court for the calling Mr. Papillion and Mr. Dubois to take the office of sheriffs on them, whereto they were lawfully chosen, protesting against the election and confirmation of North and Box, and that if endeavours were used to the contrary hereof, such proceedings would be a breach of your trusts, and a violation of the rights and privileges of the citizens of London; then the citizens withdrawing, a debate arose in the court hereon, which occasioning some sharp words, the lord mayor ordered the sword to be taken up and so dissolved the court.

"The 14th was another court of aldermen at Guildhall, where many citizens attending, those of the Whig Party delivered another paper to the same effect as the former in the behalf of Mr. Papillion and Dubois; the other side delivered a paper desiring that that court would appoint a common-hall to chuse another person to serve with Mr. North already confirmed; then a third paper was presented by Mr. Rainton (late member of parliament for the county of Middlesex) subscribed by many gentlemen and freeholders of the county of Middlesex in behalf of Mr. Papillion and Mr. Dubois, which on the other side was protested against by sir J. Butler and others, as done without their consent, or (as they believed) the majority of the freeholders of Middlesex, saying they had nothing to do with the city's choice of their sheriffs; then they were all ordered to withdraw, and after some time were called in, and told that the court had considered of their several petitions, and would take care that such persons should take the office of sheriffs as were duly elected; and that in this and all other things, that court would endeavour to maintain the rights and privileges of the chair and of the whole city, and wherein you think we do otherwise the law must judge between us, and were told that the lord mayor did intend to call a common hall on Tuesday next to elect another person to serve sheriff with Mr. North, which occasioned some to cry, No North, no common hall, we have chosen already, but they were commanded in the king's name to depart.

"The lord mayor, when he summons a common hall, usually sends his precept to each company, but this time he only sent word to the clerks of the companies.

"The 19th being the day appointed for a common hall to chuse a person to serve with Mr. North for sheriffs of London and Middlesex, the liverymen met at Guildhall in great numbers; about 11 the lord mayor and some of the aldermen came upon the hustings; and the common cryer proceeding to make proclamation, there was so confused a noise that nothing could be heard, then the lord mayor and aldermen retired into the council chamber, then the common serjeant came forward on the hustings and put up Mr. Rich, at which there was such a noise of No Rich! and that they would stand by their former choice, that nothing else could be heard, then the sheriffs came forward and put it to the common hall whether they would proceed to a new election or stand by their old choice; and much the greater number was for standing by their old choice, though many people (it is

thought) held their hands otherwise than they intended, it being hardly possible to hear what was put up, but a poll being demanded, and granted by the sheriffs, they adjourned it for an hour or two; whilst this was doing the lord mayor came again upon the hustings, and declared Mr. Rich lawfully chosen, though the noise was so great it could not be heard, and then dissolved the hall and went to his own house; about two in the afternoon, the sheriffs began the poll, during which time the lord mayor sent to them to desist, for he had dissolved the hall, but they proceeded on, and, upon casting up the books, found there was 2,082 for standing to the old choice of Mr. Papillion and Mr. Dubois, and 35 for Mr. Rich; and the sheriffs hearing that the lord mayor came again himself, hastened upon the hustings and declared Mr. Papillion and Mr. Dubois legally elected again, and then ordered the people to depart, which done, the lord mayor caused the gates of Guildhall to be shut up.

"The next day being the 20th, the lord mayor and some of the aldermen went to Whitehall to inform his majesty of the proceedings, and there were some affidavits made against the sheriffs, wherefore a council was summoned in the afternoon, and the sheriffs ordered to attend, which they doing, they were told they had proceeded in a riotous manner which they must answer, and so the two sheriffs gave a recognizance of 1,000*l.* each, and ten bail in 500*l.* a-piece to appear at the King's-bench bar the 1st day of the next term, and to answer to an information there, and in the mean time to be of the good behaviour, and so were dismissed.

"It is thought by most people that Mr. North and Mr. Rich will take on them the office of sheriffs of London and Middlesex, notwithstanding their contested election, and for this end they are fitting up Goldsmiths and Drapers halls: these things make some persons down in the mouth fearing the effects of these two being sheriffs; and scruple not to say to what end they were set up; that if the lord mayor would chuse one sheriff, they never knew any colour he has to chuse both; they call him a betrayer of their rights, and are resolved to pursue the utmost remedy the law affords; and some fear not to say the old sheriffs will not deliver up the prisons to them. These things look ill and are much to be feared; and the other side are resolved to stand by Rich and North, for they will have them in as legal officers; time must produce the consequences hereof.

"The 26th was a court of aldermen at Guildhall, where several liverymen attending presented a paper to the court in the behalf of Mr. Papillion and Mr. Dubois, very sharply representing to the court the breach of their trust and violation of their oaths, but they had answer returned them as formerly and were commanded to depart. Afterwards Mr. Peter Rich was called to give bond to take upon him the office of sheriff, which he did accordingly. Mr. Dudley North sheriff elect by the lord mayor, sent to his company the mercers, to demand, as usual, several of their company and officers to accompany him to Guildhall the day he takes the office, but the said company holding a court thereon, made an order that none of their members or officers should attend him on pain of being turned out, but that they should accompany Mr. Papillion to the said hall to present him to be sworn one of the sheriffs of London and Middlesex.

The 29th being the usual day for swearing the sheriffs elect for the city of London and Middlesex, there was a great concourse of people at Guildhall early, but the gate thereof was guarded by the Trained Bands of the city; and several of the liverymen, who were known to be for Papillion and Dubois, were denied admittance until the lord mayor himself came: about ten his lordship came, accompanied with Mr. North and Mr. Rich, and entered the hall; some Trained Bands also were placed before the hustings, and lieutenant-colonel Quiney, who commanded them, offered an abuse to sir John Lawrence, one of the aldermen, by pulling him down off the hustings when he was going up; who afterwards went to sir Robert Clayton and made oath of the assault, and had a warrant against the said Quiney, who was taken by a constable at the head of his company, and carried before the lord mayor himself, who bound him over to the sessions; these guards also gave great dissatisfaction to many citizens, complaining that they had a military power set over them. After some time, the lord mayor and aldermen came upon the hustings; proclamation was made for Dudley North and Peter Rich, esqrs. to come forth to enter upon the office of sheriffs; they presenting themselves to the court, the common serjeant began to administer the oaths, when Mr. Papillion and Mr. Dubois laid their hands also on the book; but the lord mayor commanded them, in the king's name, to depart and keep the peace; so they departed, and several of the aldermen, who were of their side, went out of the court also. After Mr. North and Mr. Rich were sworn, they were apparelled in their fur gowns and gold chains, and Mr. Hastings was sworn under-sheriff, which ended, his lordship walked home on foot with the new sheriffs and some of the aldermen of his party, and were afterwards entertained by the new sheriffs in Grocers'-hall; and, in the afternoon, the new sheriffs sent to the old ones to deliver up the gaols and prisons, which they readily performed.

It being usual for the old sheriffs to treat the lord mayor, &c. on Michaelmas-day, Mr. Pilkington and Mr. Shute sent to his lordship the night before, that since the city was come under a military government,

they thought it no proper time for feasting, and therefore should not entertain his lordship to-morrow.

"Oct. 23. There was also a motion for a Mandamus to be directed to the lord mayor and aldermen of London, for the swearing Mr. Papillion and Mr. Dubois into the office of sheriffs of London, but the court ordered cause to be shewn on Monday next.

"November. The 23rd of last month being the first day of the term, a motion was made at the King's-bench bar for a Mandamus to be directed to the lord mayor and aldermen of the city of London, for swearing Thomas Papillion and John Dubois sheriffs of the said city; but the court thought fit to give the lord mayor, &c. till Monday the 30th of the same month, to shew cause why a Mandamus should not go; which day coming, counsel for his lordship moved, that in regard that was the day the now lord mayor entered on his office, and was a busy day in the city, they desired further time to shew cause, which the court granted till Friday the 3rd of this month; which day also coming, the court put it off to Tuesday the 7th instant, in regard they were to go into the Exchequer to the pricking of sheriffs; then it came on the 7th, and counsel for the lord mayor objected that they would take out a Mandamus directed to the wrong persons, viz. the lord mayor and aldermen, whereas they ought to direct it to the court of the lord mayor and aldermen; counsel on the other side for Mr. Papillion and Mr. Dubois said, they desired nothing but that the writ should go out to the proper officers, and that the matter might come to a hearing, and it was at their peril if they took it out directed to a wrong person. Now the court thought fit to put it off till Tuesday next to consider how the practice has been to direct Mandamuses in such cases; this, if it were in an ordinary case a Mandamus, would have been granted on the first motion.

"At last the court of King's-bench are come to a resolution in the case of the Mandamus to swear Mr. Papillion and Mr. Dubois sheriffs elect, and they ordered, the 15th, that a Mandamus should go directed to the lord mayor and aldermen.

"An alias Mandamus was granted the same day for the swearing Mr. Papillion and Mr. Dubois sheriffs of London."]

THE INFORMATION.*

London, ss.

BE it remembered, that Robert Sawyer, knt., attorney general of our lord the king, who for our said lord the king in this behalf prosecuteth, cometh into court in his proper person on Friday next after fifteen days of the Holy Trinity, in this same term, and for our said lord the king doth give the court here to understand and be informed, that the 24th day of June, in the

* The original Indictment runs thus:

"London ss. Quod 24 die Junii, anno regni Domini Caroli secundi nunc Regis Angl', &c. 34. apud Guildhall civit' London quædam Cur' assemblation' civium et liberor' homin' civit' London (communit' vocat' *a Common Hall)* per Johannem Moore, Mil', adtunc et adhuc Majorem civit' London, summonit' et convocat' coram eodem J. Moore Mil', Majore civit' præd', legitimo modo tent' fuit tam pro debit' election' Vic' civit' pro execution' Offic' Vic' civit' præd' pro uno anno integro prox' sequen' post vigil' festi sancti Michaelis Arch' adtunc et adhuc prox' futur', quam pro election' diversor' al' officiar' civit' præd', quodq; adtunc et ibidem in Cur' præd' incept' fuit numerare capita (Anglice *to take the Poll)* de electorib' tunc et ibidem præsentib' pro manifestatione electionis personar' deservitur' in offic' Vic' civit' præd' pro anno suprad', quodq; præd' J. Moore Mil', Major civit' prædict', postea eodem 24 die Junii anno regni dicti Dom' Regis nunc 24 suprad' apud Guildhall civit' London' præd' in paroch' sancti Michaelis Bassishaw London præd' legitimo modo fecit et fieri causavit proclamation' pro adjorn' Cur' præd' sic ut præfurtar' tent' et adtunc et ibid' præd' J. Moore Mil', Major civit' præd', cur' præd' legitimo modo usque diem Martis tunc prox' futur', adjornavit apud Guildhall civit' London præd' tenend', et adtunc et ibidem post adjornment' præd', sicut præfertur' fact' præd', J. Moore Mil', Major civit' London præd' fecit et fieri causavit proclamation' publicam pro decession' omnium personar' ibidem ex occasione præd' assemblat'. Et ulterius idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege dat Cur' hic intelligi et informari, quod Thomas Pilkington nuper de London Ar' et Samuel Shute nuper de London Ar' (tunc Vic' civit' London' præd'), et Henr' Cornish nuper de London Ar', Ford Dominus Grey de W[ar]ke Thomas Gold nuper de London Mil', Johan[nes] Shorter nuper de London Mil', Thomas Play[er] nuper de London Mil' Wilhelmus Gulsto[n] nuper de London Mil', Slingsby Bethel nuper d[e] London Ar', Nelthrope nuper de Lon[don] Ar', Johannes Ayliffe nuper de Londo[n] Ar', Johannes Ellis nuper de London Ar', Franciscus Jenks nuper de London Lintear', Robertus Barker nuper de London Gen', Johanne[s] Deagle nuper de London Panuar', Richardu[s] Freeman nuper de London Cascarius, Benjamin Smith nuper de London Gen', Richardu[s] Goodenough nuper de London Gen', R. Kay nuper de London Mercator, Lucy Knightley nuper de London Gen', Johannes Wickhan nuper de London Gen', Samuel Swynock nupe[r] de London Mercator, Joshua Brooks nuper d[e] London Gen', Jo' Jekyll nuper de Londo[n] Gen', Dorman Newman nuper de Londo[n] Gen', T. Rawlinson nuper de London Gen', T. Carpenter nuper de London Gen', T. Charleto[n]

34th year of his now majesty's reign, at the Guild-hall of the city of London, a certain court for assembling the citizens and freemen of the city of London, called a common-hall, being summoned and called by sir J. Moore, knight, then and yet mayor of the city of London, was in a lawful manner held before the said sir John Moore, knight, mayor of the city aforesaid, as well for the due election of sheriffs of the city aforesaid, for the execution of the office of sheriff of the said city for one whole year, next following after the vigil of the feast of St. Michael

nuper de London Gen', Johannes Jekyll jun. nuper de London Gen', Benj' Alsop nuper de London Gen', M. Meriton nuper de London Gen', Car' Bateman nuper de London Gen', Johannes Trenchard nuper de London Ar', Sam' Miller nuper de London Gen', Jervas Byfield nuper de London Gen', W. Peachy nuper de London Gen', et Richardus Farrington nuper de London Ar', præmiss' præd' satis scien', sed existen' person' male disposit', et machinan' et intenden' pacem dicti Domini Regis nunc et communem tranquillitat' hujus regni Angl' inquietare, molestare, et perturbare, ipsi præd' T. Pilkington et S. Shute, sub colore officii Vic' civit' London præd', et præd' H. Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', &c. postea, et post adjornament' præd', scil' dicto 24 die Junii anno regni dicti Domini Regis nunc 34 suprad', apud paroch' sancti Michaelis B. London præd', in Guildhall præd' ibidem vi et armis, &c. riotose, routose, illicite, et seditiose, sese cum plur' al' person' male disposit', et pacis dicti Domini Regis nunc perturbatorib', ad numer' mille personar' eidem Attorn' dicti Domini Regis nunc general' adhuc incognit' assemblaver', congregaver' et coadunaver' ad pacem dicti Domini Regis nunc perturband'; et sic assemblat', congregat', et coadunat' existen', adtunc et ibidem vi et armis, &c riotose, routose, et illicite, in et super præd' J. Moore Mil', Major' civit' præd' in pace Dei et dicti Dom' Regis adtunc et ibid' existen', insult' et afraiam fecer', et ipsum Johannem Moore Mil' adtunc et ibid' verberaver', vulneraver', et maletractaver', ita quod de vita ejus maxime desperabatur: et post adjornament' præd', et proclamation' præd', sic ut præfertur per præfat' J. Moore Mil' Major' civit' præd' fact', ipsi præd' T. Pilkington et Samuel Shute, adtunc et ibidem, colore officii sui Vic' civit' London' præd', et præd' Henr' Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', &c. cum divers' al' person' eidem Attorn' dicti Domini Regis nunc general' adhuc incognit', præfat' T. P. et S. Shute illicite et seditiose auxilian' et assisten' vi et armis, &c. riotose, routose et illicite, ibidem continuaver' ad capita numerand' (Anglice *to take the Poll*) de person' sicad tunc et ibidem illicite assemblat', tanquam et quasi eædem person' licite assemblat' fuissent pro electione vic' civit' præd': Et quod præd' T. P. S. Shute, H. Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', &c. tunc et ibidem illicite, tumultuose, et seditiose, affirmaver', et quilibet eor' affirmavit, dixit, et alta voce præd' male disposit' personis affirmavit, quod præd' Johannes Moore, Mil', Major civit' London præd', illicite et injuste assumpsisset super se libertat' ad adjornand' Cur', quæ sibi præd' J. Moore non pertinebat; quodque præd' T. Pilkington, S. Shute, H. Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', et al' tunc et ibidem præd' illicite et male disposit' person', sic ut præfertur assemblat' et congregat' vi et armis, &c. riotose, routose, illicite et seditiose, per spatium trium horar' ad pacem dicti Domini Regis nunc perturband', et riot' præd' committend' excitaver', mover', pursuaver', procuraver', et adtunc et ibidem, per totum tempus prædictum, in paroch' et warda prædicta Guildhall London præd', magnos rumores clamores, vociferationes terribiles, et insolitos stridores, vi et armis, &c. riotose, routouse, et illicite, tumultuose, et seditiose fecer', et fieri causaver' et excitaver', in contempt' dicti Domini Regis nunc, legumq; suar', pacisque suæ perturbation', et violation' manifest', ad magn' pericul' incitand' et movend' tumult', et effusion' quamplurimum sanguinis iidem, ad magn' terror', inquietud', et timor' omn' ligeor' subdit' dicti Domini Regis, in malum exemplum omn' al' in tali casu delinquen', et contra pacem dicti Domini Regis nunc, coron' et dignitat' suas, &c. Unde idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Regi pet' advisament' Cur' hic in præmiss' et debit' legis process' versus præfat' T. Pilkington, S. Shute H. Cornish, Ford Dominum Grey, T. Gold Mil', J. Shorter Mil', &c. in hac parte fieri ad respondend' dicto Dom' Regi de et in præmiss', &c. per quod præcept' fuit Vic' civit' London præd', quod venire fac' eos ad respond', &c. Et modo, scil', die Mercur' prox' post tres septiman' sanctæ Trin', coram Dom' Rege apud Westm', ven' præd' T. Pilkington, S. Shute, et Richardus Goodenough, per Benedict' Brown Attornatum suum, et habito auditu information' præd', separatim dicunt, quod ipsi non sunt inde culp', et de hoc pon' se separatim super patriam: Et præd' R. Sawyer Mil', Attorn' Dom' Regis nunc general', qui pro eodem Domino Rege in hac parte sequitur similit', &c. Et super hoc idem Attorn' dicti Dom' Regis nunc General', pro eodem Domino Rege dicit, et Cur' hic ostendit, quod Thomas Pilkington et S. Shute Ar', duo defend' superius nominat', Vicecom' civit' London præd' ad præsens existunt, tamen ipse idem Attorn' dicti Domini Regis nunc General' pro eodem Domino Rege pet' breve Domini Regis præfat' Vic' London dirigend', de venire fac' coram Domino Rege duodecim, &c. ad triand' exit' præfat' int' dictum Dominum Regem et partes præd' superius in forma præd' Junct': Et quia præd' defend' hoc non dedic', ideo præcept' est præfat' Vic' civit' London, quod venire fac' coram Dom' Rege, a die sancti Michaelis in tres septiman' ubicunque, &c. duodecim, &c. per quos, &c. et qui, &c. ad recogn' &c. quia tam, &c. idem dies dat' est tam præfat' R. Sawyer Mil', qui sequitur, &c.

then and yet next coming, as for the election of divers other officers of the said city; and then and there in the said court it was begun to take the poll of the electors there and then present, for the making known of the election of the persons to serve in the office of sheriffs of the said city, for the year aforesaid. And that the said sir John Moore, knight, mayor of the said city, afterwards the said 24th day of June, in the 24th year aforesaid, at Guild-hall of the said city of London, (to wit) in the parish of St. Michael Bassishaw, London, in a lawful manner did make and cause to be made proclamation for the adjourning of the said court so as aforesaid held, and then and there did adjourn the said court until Tuesday then next following to be held at the Guild-hall of the said city of London; and then and there after the said adjournment, so as aforesaid made, the said sir John Moore, knight, mayor of the said city of London, did make and cause to be made public proclamation for the departure of all persons upon the said occasion there assembled: and further the said attorney general doth give the court to understand and be informed, That Thomas Pilkington, late of London, esq. and Samuel Shute, late of London, esq. then sheriffs of the said city of London, and Henry Cornish, late of London, esq. Ford lord Grey of Werk, &c. the said premises sufficiently knowing, but being ill disposed persons, and devising and intending to disquiet, molest and trouble the peace of our said lord the king, and the common tranquillity of this kingdom of England, they the said Thomas Pilkington and Samuel Shute, under colour of the office of

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quam præd' T. P. S. S. et R. G' &c. Ad quas quid' tres septiman' sancti Michaelis coram dicto Domino Rege ven' tam præd' R. Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. et R. G. per Attorn' suu' præd': Et Vic' civit' London non miser' inde breve, ideo sicut al' ven' inde Jur' coram dicto Dom' Rege in octab' sancti Hilar' ubicunque, &c. per quos, &c. et qui' &c. ad recog', &c. quia tam &c. idem dies dat' est tam præfat' R Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. et R. G. &c. ad quas quidem Octab' sancti Hilar' coram dicto Domino Rege apud Westm' ven' tam præfat' R. S. Mil', qui sequitur, &c. quam præd' T. P. S. S. et R. G. per Attorn' suum præd', et Ford Dominus Grey, H. Cornish, T. Gold Mil', J. Shorter Mil', T. Player Mil', &c. per præfat' B. B. Attorn' suu' similiter ven', et habito auditu information' præd' separatim dicunt, quod ipsi non sunt inde culp' et de hoc similiter separatim pon' se super patriam. Et præd' R. Sawyer Mil', Attorn' Domini Regis nunc General', qui pro eodem Domino Rege in hac parte sequitur, similiter, &c. ideo, sicut al' ven' inde jur' coram dicto Domino Rege in octab' Pur' beatæ Mariæ Virginis, ubicunque, &c. per quos, &c. et qui nec, &c. ad recogn', &c. qui tam', &c. idem dies dat' est tam præfat' R. Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. R. G. Ford Domino Grey, &c. ad quos quidem octab' Pur' beatæ Mariæ Virginis, coram Domino Rege apud Westm', ven' tam præfat' R. Sawyer, Mil', qui sequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. T. G. Mil', &c. per Attorn' suum præd': Et Vic' civit' London præd' retorn' nomina duodecim' jur', quor' nul', &c. ideo præcept' est Vic' præd', quod' distring' eos per omnes ter', &c. et quod de exit', &c. et quod habeant corpora eor' coram dicto Domino Rege a die Pasch' in quindecim septiman', ubicunque, &c. vel coram dilect' et fidel' Domini Regis Edwardo Saunders Mil', Capital' Justic' Domini Regis ad placita coram ipso Rege tenend' assign', si prius die Martis prox' post mensem Paschæ, apud Guildhall civit' London, per formam statut', &c. ven' pro defectu jur', &c. ideo Vic' habeant corpora, &c. ad recogn' in forma præd', &c. Idem dies dat' est tam præfat' R. Sawyer Mil', qui, &c. quam præd T. P. S. S. R. G. Ford Domino Grey, H. O. T. G. Mil', &c. ad quas quidem quinque septiman' Paschæ, isto eodem termino, cor' Domino Rege apud Westm', ven' tam' præfat' R. S. Mil', qui sequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' suum præd', et præfat' Capital' Justic', coram quo, &c. mis' hic record' suum coram eo habit', in hæc verba, Postea, die et loco infra content', coram infra nominat' Edwardo Saunders Mil', Capital' Justic' dicti Domini Regis infra script', associat' sibi Edwardo Watts Gen', per formam statut', &c. ven' tam infra nominat' R. Sawyer Mil', Attorn' Domini Regis nunc General', qui' sequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' suum infra script': Et jur' jurat', unde infra fit mentio exact' ven' et in jur' ill' jurat' existunt, et super hoc publica proclamatio pro Domino Rege fact', prout mos est, quod si aliquis sit, qui præfat' Capital' Justic', aut Servien' dicti Domini Regis ad legem; aut Attornatum dicti Domini Regis Generalis, aut jur' præd', de infra content' informare vellet, veniret, et audiret; et super hoc Georgius Jeffereys Mil' et Bar', ex parte dicti Dom' Reg' ad hoc fac' se obtulit, super quo process' est per cur' hic ad caption' jur' præd' pro jur' præd' modo comparen', qui ad veritat' de infra content', elect', triat', et jurat' super sacramentum præd' dicunt, quod præd' T. Gold Mil', J. Brooks, W. Miller, T. Charlton, D. Newman, J. Jekyll jun', B. Alsop, M Meriton, J. Trenchard, et J. Byfield, non sunt culp', nec eor' aliquis culp' est de præmiss' in informatione in recordo præd' mentionat', prout interius placitando allegaver': et ulterius jur' præd' super sacramentum suum præd' dicunt, quod præd' T. Pilkington, S. Shute, Ford Dominus Grey, T. Player Mil' S. Bethell Arm', F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Kay, J. Wickham, S. Swynock, et S. Jekyll sen', sunt culp', et quilibet eor' est culp' de præmiss' in informatione infra script' mentionat', prout per information' præd' interius versus eos supponitur, ideo, &c."

sheriffs of the said city of London, and the said Henry Cornish, Ford lord Grey, and others afterwards, and after the adjournment aforesaid (to wit) the said 24th day of June, in the 34th year aforesaid, at the parish of St. Michael Bassishaw, London, aforesaid, in the said Guild-hall, there with force and arms, riotously, routously, unlawfully, and seditiously, did assemble, congregate, and unite themselves with very many other ill-disposed persons, and breakers of the peace of our said lord the king, to the number of 1,000 persons, to the said attorney general of our said lord the king as yet unknown, to disturb the peace of our said lord the king; and being so assembled, congregated, and united, then and there with force and arms, &c. riotously, routously, and unlawfully, in and upon the said sir John Moore, knight, mayor of the city aforesaid, in the peace of God, and our said lord the king, then and there being, did make an assault and affray, and him the said sir John Moore, knight, then and there did beat, wound, and evil-intreat, so that of his life it was greatly despaired; and after the adjournment aforesaid, and proclamation so as aforesaid made by the said sir John Moore, knight, mayor of the said city, they the said Thomas Pilkington and Samuel Shute, then and there by colour of their office of sheriffs of the said city of London, and the said Henry Cornish, Ford lord Grey, &c. with divers other persons to the said attorney-general of our said lord the king as yet unknown, unlawfully and seditiously aiding and assisting the said Thomas Pilkington and Samuel Shute with force and arms, &c. riotously, routously, and unlawfully, did there continue to take the poll of the persons so then and there unlawfully assembled, as if the said persons had been lawfully assembled for the election of sheriffs of the said city; and that the said Thomas Pilkington, Samuel Shute, Henry Cornish, &c. then and there unlawfully, tumultuously, and seditiously, did affirm, and every one of them did affirm, say and with a loud voice to the said ill-disposed persons affirm, that the said sir John Moore, knight, mayor of the said city of London, did unlawfully and unjustly assume upon himself the liberty to adjourn the said court, which did not belong to him: and that the said Thomas Pilkington, Samuel Shute, Henry Cornish, &c. then and there, the said unlawful and ill-disposed persons so as aforesaid, assembled and congregated with force and arms, riotously, routously, unlawfully, and seditiously, by the space of three hours to disturb the peace of our said lord the king, and to commit the riot aforesaid, did stir up, move, persuade, procure, and then and there by the whole time aforesaid, in Guild-hall, London, aforesaid, in the parish aforesaid, great rumours, cries, hollowings, and terrible and unwonted noises, with force and arms, &c. riotously, routously, unlawfully, tumultuously and seditiously, did make and cause to be made, and did stir up, in contempt of our said lord the king, and the manifest disturbance and violation of his laws, and his peace, to the great danger of stirring up and moving of a tumult, and the spilling of much blood there, to the great terror, trouble, and fear of all his majesty's liege-people, subjects of our said lord the king, 'to the ill example of all others in the like case offending; and against the peace of our said lord the king, his crown and dignity, &c. Whereupon the said attorney-general of our said lord the king, for our said lord the king, prayeth the advice of the court in the premises, and due process of law against the said Thomas Pilkington, Samuel Shute, Henry Cornish, Ford lord Grey, &c. in this behalf to be made to answer our said lord the king, of and in the premises, &c.

[To this Information the defendants had pleaded Not Guilty.]

Cryer. You good men of Nisi-Prius, summoned to appear here this day, between our sovereign lord the king, and Thomas Pilkington, and others, defendants; answer to your names, and save your issues.

The Jury appeared.

Mr. *Sommers.* My lord, I am to challenge the array.

Mr. *Thompson.* My lord, I desire this challenge may be read.

The Challenge read in French.

L. C. J. (Sir Edmond Saunders*). Gentlemen, I am sorry you should have so bad an opinion of me, as to be so little a lawyer not to know this is but a trifle, and nothing in it. Pray, gentlemen, do not put these things upon me.

* A very curious account of this Chief Justice Saunders is given by Roger North in his life of his relation, Lord Keeper North. It appears that Saunders at first was no better than a poor beggar boy, if not a parish foundling, without known parents or relations. We hear of him early in life contriving to subsist in Clement's-inn by obsequiousness, and courting the attorney's clerks for scraps. His extraordinary attention, diligence, and what Roger North calls observance, disposed the members of the Inn to countenance him. As he appeared very ambitious to learn to write, one of the attornies got a board knocked up at a window on the top of a staircase, and that was his desk where he sat, and wrote after copies of court and other hands which the clerks gave him. He thus made some pence by hackney-writing. In this occupation by degrees he acquired a conversancy with forms, which branch of knowledge he cultivated and so far improved himself in it, by the study of books which he borrowed, as to be, in North's phrase, an exquisite entering clerk. By perseverance he became in a few years an able attorney, and then an eminent counsel, first in special pleading and afterwards in general business; so that while he was at the bar his practice in the Court of King's-bench was not exceeded by that of any barrister. His art and cunning were

Mr. *Thompson*. I desire it may be read, my lord.

L. C. J. You would not have done this before another judge: you would not have done it, if sir Matthew Hale had been here.

Mr. *Thompson*. My lord, I believe if there had been nothing in it, it would not have been signed.

Mr. *Attorney General* (sir Robert Sawyer.) Very few but Mr. Thompson would urge it.

Mr. *Thompson*. I do not know whether you think so, or not, Mr. Attorney; but I have a great deal to offer, if you please to answer it. We offer our Challenge in point of law.

L. C. J. There is no law in it.

Mr. *Thompson*. We desire it may be read in English.

L. C. J. Why? Do you think I don't understand it? This is only to tickle the people.

The Challenge read by the Clerk accordingly.

Serj. *Jefferies*. Here's a tale of a tub, indeed!

L. C. J. Ay, it is nothing else; and I wonder lawyers would put such a thing upon me.

Mr. *Thompson*. My lord, we desire this Challenge may be allowed.

L. C. J. No, indeed, won't I, there is no colour for it; and I am apt to think, there are not many lawyers in England would have put such a thing upon me: because I am willing to hear any thing, and where there is any colour of law, I am not willing to do amiss: Therefore you think I am now become so very weak, you may put any thing upon me; without you think I was always so, and therefore may be so at this time. For, pray now consider, if so be the king's counsel should come and plead this Challenge, what would be the consequence of it? I thought you would have said, that the sheriffs had been a-kin to the king, but you have made it worse. You do come with a long tale here of the whole merits of the cause, and more than yet doth appear; and by this you would have the challenge to be allowed: in such a case a man may come and tell a tale of the merits of the cause, and then it must be tried by the Challenge. If the sheriffs do return an inquest for the king, and the sheriffs do hold of the king a fee-farm, or have a pension or an annuity from the king, the book doth say, that in some cases it is a Challenge; for though they cannot be challenged as being favourable for the king, yet for those reasons they may be challenged. But what is here? Here you tell a long process concerning a difference between the mayor and the sheriffs, and all this matter is wrapped up all together; and if all this were true, it is no Challenge at all.

Mr. *Thompson*. We shall speak with all submission to your judgment, my lord.—Good Mr. Attorney, give me leave.

Att. Gen. I move for you.

Mr. *Thompson* If you please, you may move for yourself; I don't need you to move for me. My lord, with submission, the information is not good: My lord, it is an information that doth set forth, that my lord mayor had right of adjourning the poll, when an election is to be for sheriffs. My lord, if he had not that right, it can be no riot according to this information. My lord, upon his adjourning, Mr. Sheriff North was chosen: My lord, if that adjournment was not according to law, Mr. Sheriff North never was sheriff of London; then, my lord, here is the case in this question of title; for Mr. North doth come in question, Whether he be a legal sheriff of London?

L. C. J. Prove to me now that of sheriff North; pray what annuity, pension, or fee-farm hath he as sheriff of London, whereby he is concerned?

Mr. *Thompson*. My lord, there are other reasons which I shall shew to you; and the first reason, my lord, in this case, is this; it will appear the election of Mr. North is interested in this matter; and sir John Moore had not an opportunity to adjourn the poll, Mr. North was not chosen duly sheriff; now, if the sheriff's choice come in question in point of right, it is a good Challenge.

L. C. J. In point of profit it might be so, and not in all cases neither; for he that holds

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equal to his knowledge; and his success in the causes in which he was engaged was frequently effected by snares and other tricks of his contrivance. The detection and even the exposure of his practices, however base and however disgraceful they might have been, seem never to have distressed or disconcerted him. Upon such occasions he had recourse to some jest, with which sort of evasion he was very ready, and as it appears very successful. In the proceedings upon the Quo Warranto against the city of London, he was much employed for the crown. Of his personal appearance the heaviness and awkwardness is said to have been as uncommon as the promptitune and vivacity of his intellect. His body is represented as a lump of morbid disgusting and offensive matter, and the same brutish insensibility of shame which disposed him to consider his base violations of the lowest honesty as matter of mirth, enabled him to indulge in gross and odious effusions of coarse and vulgar jocularity upon the most loathsome concomitants of his diseases. He was the author of a book of Reports, which are composed in an admirable simplicity of construction, and exhibited with a lively interesting dramatic air, and in a style of exquisite terseness and precision. Lord Mansfield denominated him the Terence of Reporters. It must not be omitted, that the learned serjeant Williams has by his notes rendered the last edition of Saunders's Reports a profound, perspicuous, ample, and most instructive and satisfactory digest of the law, respecting the important topics, which were agitated in the causes reported by his author. Since this note was prepared, the profession has been deprived by death of the learned Serjeant.

lands *in capite* of the king, cannot be challenged for all that.

Mr. *Thompson*. I think, my lord, this is a common case in our books, That if in case a sheriff be concerned in point of title, this is a principal challenge, because that he is interested in that title, he is no person by law to return a jury. I do not doubt but your lordship will do that which is right, and according to law. My lord, I say, where a sheriff is interested in point of title, he is no person by law to return a jury, and this question will appear plainly upon this information; for if in case this was not a lawful adjournment by sir John Moore, this is not a lawful return——Gentlemen, my lord I know will hear me, if you have but patience; I always speak and stand up for my clients as I ought to do. If you please to let me have liberty, I have my lord's. If a sheriff be concerned in point of title, it is a principal challenge, and the sheriff ought not to return the jury, but the coroner: And, my lord, much more in this case; for that the very title to the office of sheriff is here in question, and therefore he is no person fit to return this jury, my lord. We desire your lordship's opinion.

L. C. J. Mr. Thompson, methinks you have found out an invention, that the king should never have power to try it even so long as the world stands. Say you, sheriff North is not a right sheriff, who should have been? Why, say you, Dubois and Papillon, or one, or both of them. Now the king he hath brought his suit for a riot.

Serj. *Jeff.* And an assault and battery upon sir John Moore.

Mr. *Thompson*. That is a fiction.

L. C. J. The king hath brought his suit, and brought it to an issue. Why now, if so be this challenge should have any thing in it, then the king must have challenged North, and what must he have done then? Why, for Papillon and Dubois, they are not sheriffs *in actu*, then, say you, the coroner. Pray, Mr. Thompson, if so be the king had made the Venire either to Papillon or Dubois, or to the coroner: Whether or no had not the cause been found against the king, before one word had been said actually for him? You say the question is, Whether he be a sheriff or not? If the king had challenged him, and made the Venire to the coroner, for God's sake, had not that made an end of the question?

Mr. *Thompson*. No, my lord, not at all.

L. C. J. Now? Then I understand nothing.

Mr. *Thompson*. My lord, if the sheriff appear to be concerned, it doth not determine the cause.

L. C. J. But it does by your own opening now. You say the question is, for which you do now challenge the array, because it is returned by sir Dudley North, supposed to be one of the sheriffs, and tell the whole process, how that in truth it is a question whether he be a sheriff or not; and therefore, say you, or you say nothing, that the Venire should not go to North.

Mr. *Thompson*. No, my lord, I pray, good my lord——

L. C. J. Should it have gone to Dudley North, and then have been challenged for him?

Mr. *Thompson*. No, I beseech your lordship we do not say so. My lord, we say, That whereas they do charge in the information, that there was an assembly for the election of sheriffs and that sir John Moore being then mayor, did lawfully, according to law, adjourn this assembly; and that afterwards the defendants, Pilkington and Shute, did continue this assembly, and took a poll, and so they would make this a riot in the continuance of it. My lord, we de say this, That the election of Mr. North upon this point doth come in question; and my lord, we do say, That if that be not a legal adjournment, then Mr. North is not legally chosen.

L. C. J. Right, now you have told it in more words.

Mr. *Thompson*. We say, If the election be interested, they are all parties by law.

Serj. *Jeff.* Who would you have the process go to?—Mr. *Thompson*. To the coroner.

L. C. J. Very well, upon my word. If he were sheriff, it cannot go to the coroner, you know, and therefore if he were challenged, to go to the coroner——

Mr. *Thompson*. 'Sub judice lis est,' my lord.

Serj. *Jeff.* We desire for the king, that the challenge may be over-ruled.

L. C. J. Ay, ay.

Serj. *Jeff.* I desire the jury may be sworn.

Mr. *Williams*. Certainly if they be impanelled by persons that are not sheriffs, that is a good challenge, that is admitted by every body; now we have made a challenge, and that is a good cause of challenge certainly, if that were the cause. But now, my lord, I must confess what your lordship says, it is a difficult matter to challenge any array, because they are arrayed by a person that hath an interest, or some such thing that is a challenge of the array, but that is not the matter in this case. It cannot be denied, if these persons were not sheriffs of London, that that is a good cause. I take the result of the challenge to be this: Say we, the principal question of this information, the riot, will depend upon this question, whether there were a regular adjournment or not? There, say we, begins the question of the riot. If so be that my lord mayor of London that was, had power to adjourn the court, and it be admitted a regular adjournment, certainly the riot would follow, and what follows then? Then comes on a question, and it is immediately consequent upon it, that these gentlemen be actual sheriffs of London, they being actually chosen upon this adjournment, they are actually sheriffs; But if really my lord mayor had no power to adjourn, and that power was in the sheriffs, that they were actually taking the poll, and the poll was for Mr. Dubois and Mr. Papillon: Then the question

is, if so be the adjournment by my lord mayor were not a good adjournment, then the poll was a regular poll taken by the sheriffs, then consequently those that were elected upon that were truly chosen, and then it is a right challenge. These gentlemen, I must confess, they are sheriffs *de facto*? but we know very well there may be sheriffs *de facto*, and there may be other sheriffs *de jure*, these things are very consistent. If so be that Mr. Papillon and Dubois be duly elected, they are sheriffs *de jure*, but they want the formality, for they are not sworn, and cannot return a jury. On the other side, the sheriffs are sheriffs *de facto*, but not legally chosen, and the riot will depend upon that question, of the other persons that are sheriffs *de facto* and not *de jure*. This we suggest in this, whether your lordship will receive this challenge, or whether your lordship will proceed first to the trial of the cause, and let this follow. My lord, might not there have been something in this case upon the roll at Westminster? Might there not have been a surmise to this purpose, because there is such a question upon the roll? For it appears, that the common hall was for the election of sheriffs, and that it was adjourned by the mayor; And what followed? Might there not be such a surmise, that the *Venire facias* should not go to the sheriffs, but to the coroner? Might there not have been such a thing?

L. C. J. My speech is but bad: Let me know what objection is made, and if I can but retain it in my memory, I don't question but to give you satisfaction. If the king had brought an information against Mr. Sheriff North, and charged him with a crime, there is no manner of question, that the king should have challenged as he was a sheriff, and sent the Venire to the coroner, or other officer; here he is not accused, nor to be acquitted, of any crime. Gentlemen, I put you upon this, if so be that the sheriff of London should get a great deal of money, (but I never understood, that he got by it) if you prove, that he hath got any considerable matter by the office, it would be something in the case, that he should be greedy of the office. But look ye, on the other side, if there be nothing in it one way or another, that there is profit accruing to him by the office, what can the law say? But here was the question between, indeed and in truth as you do open it, between the mayor, sir John Moore, I think, and the sheriffs that then were, that was the question between them. Now what is this in point of law, that the sheriffs must be challenged? They must be challenged, because it is returned by these sheriffs. You can't say the sheriffs do favour—the king.

Solicitor General. My lord, we trouble your lordship about a question very unnecessary: The sheriff is not concerned in this question, neither can the consequences affect the sheriff any way.

Sir *Fra. Winn.* My lord, if I don't shew that he is concerned, notwithstanding what Mr. Solicitor says, it is another matter. If this had been upon a common riot, and not related to the election of sheriffs, it would have been harder against us. I only offer a word or two, and submit to your lordship. This information doth take notice of the election of sheriffs, and of an irregularity in disturbing the late lord mayor about adjourning the poll: I do believe, my lord, it will not be denied, but that in this cause a riot or no riot will depend upon the poll, or the mayor's adjourning. If that be so, that which your lordship is pleased to urge, that the sheriff gets nothing, yet that he hath assumed the office *de facto*, appears by the return, that is very plain, my lord, he hath assumed it, and did exercise it. If it appear to be legal or illegal upon the adjournment by the mayor, then it must have one of these two consequences. My lord, I humbly conceive, till the sheriffalty had been agreed, it would have done very well for Mr. Attorney to let this riot alone, unless he would have made it a common riot; if he would have been pleased to stay till the law had determined who had been the right sheriffs, then process would have gone for the king. And, my lord, there is another thing under favour: If Mr. Attorney had been pleased to prosecute for the king, then surely, my lord, there was a way to lay it so that the process should be returned by persons uninterested, and not by the sheriff whose election is in controversy: I don't argue out of the record, but by the record itself. If in case it doth appear still to be under consideration; if that be so, I do humbly conceive, because that right of election of sheriffs is undetermined, that therefore he might have made the process to the coroner, if he would have made it before; but it should not be heard before the election of the sheriffs, because it will be a riot, or not a riot upon that.

L. C. J. Good now, sir Francis, you mistake, it could not be to the coroner.

Sol. Gen. My lord, it is but wearying your lordship to no purpose.

Mr. *Wallop.* If he be not a sheriff, that title of his depending upon my lord mayor's adjournment, which is reasonably set forth, it is concerned in the consequence of the cause.

Att. Gen. If you please, my lord, I will answer what hath been said. Mr. Thompson did first urge according to the rules of law, if the matter that appears upon the record be the thing in question; that if the sheriff be interested in that matter, that that is a good cause of challenge. That is a good rule, and the law is so; but that is nothing to this purpose; my lord, here upon the record there is nothing in question but a fine for the king, nothing to be recovered: where lands are in question, as in an ejectment, if the sheriff be interested in that land, in that case that is a good challenge; but here appears nothing by the record, here is nothing in question but a fine for the king; so that certainly that case, in point of law, is nothing to the purpose. Then they say it appears in the record by recital, and in the information, for that is the substance of all they

say: it doth appear there, as it is said, that the mayor did adjourn the court, and so the question of the riot will very much stand upon the validity of that adjournment. But it doth not wholly stand upon that; for there are many outrageous actions, assaults of the mayor, throwing off his hat, great clamours; thrusting and pressing many of the aldermen; nay, bruising them; so that this riot, notwithstanding the adjournment, be that as it will, will appear, in the upshot of the cause, to be a riot, notwithstanding that question. But in the second place, the question of Mr. North's being a sheriff, or not a sheriff, no ways depends upon this adjournment, no pretence of the title depends upon that; so, my lord, they have suggested a thing that is foreign to the record; it depends purely that, upon a custom of the city for my lord mayor to elect, not upon the power of my lord mayor's adjournment; for after that they proceeded on with the former choice of Mr. Papillon and Mr. Dubois; so that whether that adjournment be a good adjournment, or no good adjournment, his title will depend upon that, whether at the second meeting or no Mr. Papillon and the other gentleman be well chosen, and Mr. North not well chosen; so that his title doth not depend upon this question one way or other. But, my lord, that which makes this as frivolous a thing as ever was urged in a court of law, my lord, that it should have been upon rule before any direction to the sheriff or coroner, if they would have had process; they have suggested matter of fact wholly out of the record, matters have been suggested, that it might have been tried before it came to direction; now there appears nothing in the record to bring a challenge to try the matter; nay, as they themselves say, it is to try the merits of the whole information, that the information depends upon that question, whether the mayor may adjourn? It is a great usurpation upon the government of this city, as they have done in other things to the king My lord mayor is the supreme magistrate here, and the sheriffs have nothing to do in this point, and therefore I pray it may be over-ruled, and that the jury may be sworn.

Mr. *Thompson*. We would have, my lord, the benefit of a bill of exceptions.

Serj. *Jefferies*. Swear the jury, swear the jury.

Mr. *Thompson*. I have another challenge.

L. C. J. I tell you plainly, I see nothing in it for a bill of exceptions.

Mr. *Thompson*. We desire we may have the benefit of a bill of exceptions. My lord, if this be the case of trying a riot, we must take what advantage we can in point of law.

Serj. *Jefferies*. We come to counsel the king, as we ought to do, by law.

Mr. *Thompson*. My lord, I challenge, on the behalf of my lord Grey, this jury. [Challenge read.]

Seignior *Grey*.

Att. Gen. They call that a Newgate challenge.

Mr. *Wallop*. That was a challenge taken at the Old Bailey.

Mr. *Thompson*. And over-ruled.

Serj. *Jefferies*. And I pray it may be so here.

L. C. J. I think your challenge is, that they are not sheriffs?

Mr. *Thompson*. My lord, is the fact true or false? I desire of these gentlemen, if it be insufficient in point of law, let them demur.

Serj. *Jefferies*. Pray tell me, Robin Hood upon Greendale stood; and therefore you must not demur to it.

Mr. *Thompson*. If the challenge be not good, there must be a defect in it either in point of law, or in point of fact. I desire, on the behalf of my lord Grey, this challenge may be allowed.

Serj. *Jefferies*. And I pray for the king, that it may be over-ruled.

L. C. J. I think you have owned them to be sheriffs already.

Serj. *Jefferies*. My lord Grey did own it in his challenge, because there were no knights.*

L. C. J. We try a great many Nisi-Prius here sometimes, two or three days after the term, every defendant, that thinks it goes hard with him, we must have a trial still, whether the sheriffs be sheriffs, or no? This that you have done now, may be done in every cause that we may be trying. Upon your evidence

* "February, 1683. The 16th was a trial at Guildhall, before the Lord Chief Justice Saunders, touching the pretended riot at the election of the present sheriffs of London, against the lord Grey of Work, sir Thomas Player, Mr. Pilkington, Mr. Shute, and several others, the jury being returned by North and Rich, the two sheriffs, and a good one it was, being in their own cause, a challenge was taken to the array, for that no peer" [qu. knight] "was returned being in the case of a peer of the realm. The challenge was allowed and so it was put off to the next term." Narcissus Luttrell's "Brief Historical Relation," &c. MS. in All Souls' library.

See, too, S. C. Skinn. 117. 3 Mod. 262. But now by st. 24 G. 2, c. 18, s. 4, after a recital that great delays did frequently happen in trials where a peer or lord of parliament was party, by reason of challenges to the arrays of pannels, of jurors for want of a knight's being returned on such pannels, for remedy thereof it is enacted, "That no challenges shall be taken to any pannel of jurors for want of a knight's being returned in such pannel." The report in the text does not at all disagree with Luttrell's account of the Reports in Shower and Skinner. The challenge for want of a knight appears to have been made when the cause was called on at the sittings after Hilary Term, 34 and 35 Car. 2, whereas the trial as reported in the text, was not had till nearly three months afterwards, and there seems not then to have been any deficiency of knights in the pannel. It appears that the five persons first sworn upon the jury were knights.

if you can prove them none, you go a grea way.

Mr. *Thompson*. My lord, we desire the challenge may be allowed, or otherwise a bil of exceptions. My lord, we pray a bill o exceptions.

Serj. *Jefferies*. This discourse is only fo discourse sake; I pray the jury may be sworn

L. C. J. Ay, ay, swear the jury.

Sir *Benjamin Newland*, &c. sworn.

Mr. *Thompson*. We challenge Mr. Fensil he hath given evidence in this cause at the council-table.

L. C. J. What then?

Att. Gen. My lord they shall have all fair.

L. C. J. Mr. Attorney says he won't stand upon it.

Mr. *Thompson*. My lord, we pray a bill of exceptions.

L. C. J. I think many would not have offered it besides you. Shall I go and sign a bill of exceptions, to let all the world know this is so, and so all the world must try whether they be sheriffs of London?

Mr. *Thompson*. My lord, do not say so; for I think all the counsel in the court would.

L C. J. If it doth fall out, that in truth they do not happen to be sheriffs, surely you shall have all the advantage that can be for you; but pray do not think, that I will put off a trial upon every suggestion that the sheriffs are not sheriffs. You shall have all that is law by the grace of God, and I am not afraid, that you or any man should say, I don't do justice; I am not bound to gratify every man's humour;* I am to do according to my conscience, and the best of my knowledge, and according to my oath; and I will do that, and gratify no man.

Sir Benjamin Newland, Sir John Matthews, Sir John Buckworth, Sir Thomas Griffith, Sir Edmund Wiseman, Percival Gilburne, Henry Wagstaff, Barthol. Feriman, Thomas Blackmore, Samuel Newton, William Watton, George Villars, jur.

Cryer. O yes, O yes, O yes, If any man can inform my lord the king's justice, the king's serjeant, or the king's attorney, or this inquest now to be taken, &c.

Mr. *Dolben*. May it please your lordship, and you, gentlemen of the jury, this is an Information brought by the king against Thomas Pilkington, &c. Gentlemen, the Information sets forth, That upon the 24th of June last, in Guildhall, there was a common hall summoned by sir John Moore, knight, and thereupon held for the election of sheriffs for the year then ensuing the feast of St. Michael: and that on the same 24th of June, sir John Moore, then mayor, adjourned the court till the Tuesday following by proclamation. That after the said adjournment, my lord mayor made proclamation for all persons to depart; and that the defendants, intending to disturb the peace of the king after the adjournment aforesaid, did unlawfully, with many persons unknown, meet together, and riotously assault the lord mayor. And after the adjournment by proclamation, two of the defendants, Pilkington and Shute, by colour of their office as sheriffs of this city, and the rest of the defendants, did continue the poll, and unlawfully affirm to the people, That sir John Moore had no power to adjourn them. And that they continued this great tumult three hours, to the terror of the king's subjects, and the evil example of others, and against the peace of our sovereign lord the king. To this the Defendants have pleaded Not Guilty, &c.

Attorney General. This Information, my lord, is brought for settling the peace in this city, and to shew before you all, who is the supreme magistrate under the king in this city; for that, gentlemen, you see, is grown a great question, Whether my lord mayor is not only in the hall, but in his chair, the supreme magistrate?

Gentlemen, I must acquaint you, that my lord mayor in all times, even before the city had the election of him, was the king's lieutenant, and the supreme magistrate in the city, and no public assemblies could ever meet together without his summons; he was the great and chief director, and this I believe in ll your observations that are of the jury, I can make it evident, that this hath been the constant frame of this government in the city: or the sheriffs, gentlemen, they are no corporation officers, they are county officers, as in all the counties of England; and they are the king's officers for the execution of the king's writs, and the preservation of the king's peace; but the government of the corporation is in the mayor, and not in the sheriffs. Gentlemen, the question now arising here, is about the election of sheriffs; it is true there were very disorderly tumultuous proceedings; my lord mayor he comes and doth appoint another day for them, and discharges them at that time. We will make appear to you, that it was always his right in all times, both to summon a common hall, and dissipate it, and appoint them another day, or to dissolve them, as the mayor did see cause. The mayor having, according to the ancient manner, adjourned this court, the sheriffs they proceed; do not only refuse to obey, but they proceed,

* In proceedings in which, under the statute of Westminster the second 13 Ed. 1, st. 1, c. 31, a bill of exceptions lies, the judge is obliged to seal such bill. See the stat.; Runnington's ed. of Hale's Hist. of the Common Law 290; Tomlins's Law Dict. 3 Blacks. Comm. 372. It appears that in Rich. v. Player, as reported by sir Bartholomew Shower (p. 262) next immediately after this case of Pilkington and others, a bill of exceptions was allowed on a challenge of the array. As to the form of procedure upon a bill of exceptions, see in this Collection Leach against Money and others, A. D. 1765.

and make proclamation, that it is not in the power of the mayor, taking upon them that which never any sheriffs did in any time; they make proclamation contrary to what the mayor had done, and continue the poll, and proceed and proclaim the mayor had usurped that power which was their's, though afterwards they transferred the supreme power to the liverymen; but I think no age will suffer, that the supreme power should be in the liverymen, that are expressly appointed to act by a common council, which is indeed the representative of the whole city. But this, gentlemen, being done by the sheriffs having usurped the power of the mayor, they did proceed in a riotous manner; when the mayor attempted to go out of the hall, they struck him, struck his hat off, and pressed several of the aldermen; the evidence will make out in what an outrageous manner it was carried on. If the others had made opposition, how soon had all been in confusion upon this usurpation, that the sheriffs had set up for themselves, that they are the delegates of the people, and must appear to be the supreme magistrates of the city of London! I think the citizens themselves will never endure, that those that are but county officers, should ever invade the government of the corporation. Gentlemen, we will shew you the particulars of this, and you have nothing to inquire after, but whether they are guilty of the riot or no?

Solicitor General. My lord, we will call our witnesses, and prove our case by these steps. For the question, That whether or no the defendants in the information were guilty of a riot, in continuing the assembly after my lord mayor had adjourned them, we will prove it by these steps, that it is in the power of the lord mayor to call a common hall, and adjourn the common hall; that, my lord, when the common hall was assembled for the purpose of electing sheriffs, that he did adjourn the common hall; and that contrary to his adjournment the sheriffs continued it, declaring my lord mayor had no right so to do; and that afterwards my lord mayor commanded them to depart, and they continued their assembly there in a very riotous manner; and as my lord mayor came down, they offered insolencies to his person, and they continued the assembly there in a riotous manner, and commended the sheriffs that did assert their right, following them in a riotous manner into Cheapside, crying out in a factious manner, 'God bless the Protestant sheriffs.'

Serj. *Jefferies.* My lord, we would begin with our witnesses; but for the gentlemen of the jury, which I think are men that belong to the city, and that the thing may be very intelligible, I beg leave to acquaint your lordship with the methods that have always been proceeded in, in choices of this nature. My lord, we will make it appear, and I think it will not be doubted by any man that knows the city of London, that common halls are always summoned to appear by the intimation of the mayor, of the mayor himself, at any time when he finds an occasion, either for the assembling of a common council, or the assembling of a common hall, &c. precepts are issued; they are words that you, gentlemen, do understand very well, to summon a common hall from time to time. It is very true, though they do usually make summons for Midsummer-day, yet Midsummer-day being a public and notorious day for the choice of some particular persons, they are not so continually exact in summons; for they do presume, that every body takes notice of the day. But I am to give your lordship an account: whereas in the record there is only notice taken concerning the sheriffs on Midsummer-day, it is notoriously known to all gentlemen that are inhabitants in London, there is a choice of chamberlain, and auditors of the bridge-house and chamber-accounts, down to ale-conners; and that the sheriffs of London, *qua* Sheriffs of London, are no more in the case than any private man is. I do take notice of this, to give you an account, that as soon as these officers are dispatched, I myself had the honour to serve the city some time, and know it very well; therefore I take the liberty to explain it to some of these gentlemen that are foreigners. My lord, as soon as ever this is done, (as it was frequent before people were so ambitious to come into the office of sheriffs, as they have been within two or three years; for it was not known till of late, that the people were fond of the office; there is a term they use, 'To go a Birding,' as they call it, they did not seek for the office, as they have done of late) when there was any person came off from serving, that is, paid a fine of 400*l.* for coming off; then the usual method was to call another common hall; for they never made application to Mr. Sheriff, 'Good Mr. Sheriff, let us have a common hall:' But the common way, was in time of vacation, (for in August, there are no such things as courts of aldermen held; courts are not then held, except the sheriffs court) then to go to my lord mayor's house, and he appoints them to come to a common hall, a meeting for to chuse such and such: He orders the sword-bearer, or other officer that is attendant upon his person in his house, to send forth summons, in order to such a thing as the assembling a common hall, and there may be sometimes but one sheriff there; nay, I have known it sometimes when there hath been never a sheriff, and yet they have not thought they have wanted a judge of that assembly: But, my lord, when all the matter is over, and persons are declared to be chosen into this or that, or the other office in the common hall, then an officer in the city, not an officer of the sheriffs, but an officer which is called by the name of the Common Cryer, he makes proclamation upon the hustings, where my lord-mayor is judge, for all gentlemen to depart for that time, and to give their attendance there to another summons. And now,

my lord, to make the thing a little more intelligible, there is a difference between the choice of the county officers and the corporation officers; for at the election of city officers, the Common Serjeant, the Common Cryer, and Town Clerk, and the officers that attend and manage the common hall, where my lord-mayor is looked upon to be the superintendant; but at the election of parliament men, the writ is directed to the sheriffs, and they interpose in all the management; and then the Common Serjeant and Common Cryer have nothing to do; but at such times, the Secondaries of the Compter, which are deputies to the sheriffs, they come and manage the whole affair. This I tell you, because I have been pretty well acquainted with the methods of the city. I do very well remember I had the honour to serve the city of London, at that time sir Robert Clayton was lord-mayor; and there was a great occasion to try a person about the assassination of Mr. Arnold; and the question was, Whether they should proceed to a poll or not? because they were to go to the Sessions-House in the Old-Bailey, in order to the trying of that person. That worthy gentleman being then in the chair, I had the honour to sit by him; ordered the court to be adjourned for a day or two, because they were to go to the Sessions. There was no asking the sheriffs opinion when sir Robert Clayton was lord-mayor, nor there was no such thing then; but now the case was altered, for sir John Moore was lord-mayor. Now, my lord, sir John Moore, like a good magistrate, endeavouring to preserve the privileges of the chair, there happened a controversy amongst the members of the common hall, whereby the public peace of the kingdom might have been much injured, as well as the peace of the city very much disturbed. To prevent which, sir John Moore, with the advice of his worthy brethren the aldermen, came upon the hustings, and found they were all in an uproar, and not cool enough for any debate; for they were wound up to that height of fury or madness, that they had not a good word to bestow upon their magistrates, nor upon him whom their chief magistrate did represent. For we must tell you, when they cried, Pray God bless the King, as is usual for the officer upon such occasions; many cried, No, God bless the Sheriffs, the Protestant Sheriffs. Whereupon my lord-mayor, for preservation of the peace, adjourned the common hall, and required the members to depart and come down off the hustings: The rabble, (for by the way, a great many of these persons in this Information, as Mr. Goodenough, and the rest of them, were not liverymen, nor concerned in the election one way or other; but came there on purpose to foment and to raise up the spirits and malignant dispositions of a sort of people that are enemies to the government; they came to foment quarrels, and not maintain peace) my lord, when my lord-mayor came off the hustings, they came upon him, had him down upon his knees, and his hat off; and if some gentlemen had not come in, they had trod him under feet; such an indignity was then done to the lord-mayor of London, who, I think I may say, deserved as well from the government of this city, as any gentleman that ever presided in that office, that before had not been heard. My lord, we will call our witnesses, to prove the manner of the elections to be as I have opened it, and to prove the matter in the Information.—Call the Common Serjeant and Mr. Lightfoot, the Common Cryer, and the Sword-bearer.

Att. Gen. Mr. Lightfoot, pray give an account to the jury and the court, of the manner of election, and chusing a common hall, and the manner of it.

Lightfoot. My lord, I have been almost 25 years an attorney; I always took it, that the serjeant of the chamber had order to go down to the clerks or beadles of the companies, to summon a common hall by such a day.

Att. Gen. By whose command?

Lightfoot. By my lord-mayor's.

Att. Gen. In all your time, did the sheriffs ever summons any?

Lightfoot. O, no.

Serj. *Jefferies.* Pray Mr. Lightfoot, thus: When they were met, what was the usual method?

Lightfoot. Before the lord-mayor and aldermen were set, the people walked up and down the hall till the lord-mayor did come; but as soon as my lord mayor came, the Common Cryer made proclamation, 'O yes, you good men of the livery, summoned such a day for election, and so draw near, and give your attendance.'

Att. Gen. Whose officer was the Common Cryer?

Lightfoot. My lord-mayor's officer.

Serj. *Jefferies.* A corporation officer.

Att. Gen. Now for the dissolving them.

Lightfoot. When they have done the business, Mr. Town Clerk, as I take it, takes his direction from the lord mayor, and he bids the officer make proclamation; 'You good men of the livery, depart hence for this time, and appear at a new summons.'

Att. Gen. Did the sheriffs ever dissolve them?

Lightfoot. Never.

Att. Gen. Did the common hall do it?

Lightfoot. No, there was no such thing.

Mr. *Jones.* Mr. Lightfoot, after my lord mayor had dismissed the hall, did you ever hear the sheriffs keep them together?

Lightfoot. All the people went away till within this three or four years.

Mr. *Jones.* Since when?

Lightfoot. Since Mr. Bethel, about that time.

Serj. *Jefferies.* Ay, in Bethel and Cornish's time, then began the bustle.

Mr. *Williams.* You say you have been an attorney 25 years; I would ask you, in all that time, Mr. Lightfoot, in all that time, did you ever know the lord mayor adjourn the common hall to a certain day?

Lightfoot. There was never any occasion.

Mr. *Thompson.* Answer my question.

Lightfoot. I never did.

Sir *Fr. Winn.* I would ask you another question, Mr. Lightfoot: did you ever know, before the election was over, when the electors were chusing sheriffs, or polling, or debating it, did you ever know in the middle of it, the mayor, against the will of the sheriffs, adjourn it?

Lightfoot. No, no.

Sol. Gen. Did ever the sheriffs undertake to keep them together before these late times?

Lightfoot. No, never.

Mr. *Thompson.* Pray, Sir, this: Though it is usual, after the sheriffs have taken the poll, to acquaint my lord mayor, did you ever know, that the sheriffs have adjourned the common hall without acquainting my lord mayor?

Lightfoot. No.

Mr. *Thompson.* I ask you one question more: do you remember when there was a poll betwen sir Thomas Stamp and another?

Lightfoot. No, I do not charge my memory with it.

Mr. *Thompson,* Do you remember when there was a poll between sir Robert Clayton and Mr. Kyffen?

Lightfoot. I was about the hall.

Serj. *Jefferies.* Do you remember when there was a poll between sir Simon Lewis and Mr. Jenks? Who did manage that poll?

Com. Serj. I did.

Mr. *Williams.* Are you upon your oath?

Com. Serj. Yes, I am.

Lightfoot. When they were gone to the poll, I went out of the hall.

Att. Gen. Did you ever look upon it, that the sheriffs had any thing more to do than others?—*Lightfoot.* No.

Att. Gen. Who were induced to take the poll? Was it by the sheriffs or the lord mayor?

Lightfoot. I have been appointed by my lord mayor. I do know, that the sheriffs have taken upon them to appoint a poll, and then my lord appointed his clerks in the house to be assistant to the common serjeant, and the town clerk: I never was but in two polls, one for Mr. Box, and another for my lord mayor. One went on with the poll in one place, and the other in another.

Att. Gen. But before that time, Sir?

Lightfoot. I know nothing of that, Sir, I was never concerned before.

Mr. *Holt.* Pray, Sir, who used to manage the poll before this time?

Sir *Fr. Winn.* Mr. Lightfoot, I would ask you a question: who managed the poll before?

Lightfoot. I have been in a common hall when they have been chusing sheriffs, when several have fined. And it hath been upon the question, when the hall hath divided, and they have polled in the hall.

Sir *Fr. Winn.* Who polled then?

Lightfoot. The sheriffs and the officers stood and saw them go out, and this is within these few years.

Sir *Fr. Winn.* Mr. Lightfoot, I ask you thus: now in all your observations, when there was any contest, who was sheriff upon the election, and the divisions during the time of election, and before it, were at an end, who did manage it, the sheriffs, or the lord mayor?

Lightfoot. When the court had been proclaimed, and the recorder had spoken to them, my lord mayor and the aldermen withdrew from the bustings, and the sheriffs and other officers stood there with them; then the commons proposed who they would have put in nomination, and they were put up; then the sheriffs have turned back to the gentlemen upon the hustings to ask their opinions, how are your opinions concerning the hands? We do think it goes so; then it hath been declared.

Sir *Fr. Winn.* By whom?

Lightfoot. The common cryer, or the common serjeant.

Sir *Fr. Winn.* You say, as soon as my lord mayor withdrew, during the time of election, the two sheriffs managed the hall.

Lightfoot. In that manner with others.

Sir *Fr. Winn.* Mr. Lightfoot, do you remember who adjourned the hall, when Mr. Bethel and Mr. Cornish were chosen?

Lightfoot. I cannot tell.

Serj. *Jefferies.* Mr. Common Serjeant, are you sworn?—*Com. Serj.* Yes.

Serj. *Jefferies.* Pray will you tell my lord and the jury what you have observed in particular, because I mentioned it, in the time of sir Robert Clayton? Mention how that was.

Com. Serj. My lord, when the common crier hath made proclamation, the lord mayor and court of aldermen being set upon the hustings, Mr. Recorder makes a speech; as soon as that is done, my lord mayor and the aldermen retire into this court, leaving the sheriffs and me, and the rest of the officers, upon the hustings, and I there manage the election; and when the election is made I go up to the court of aldermen, and make report of what hath been done in the hall. I declare the election, and I manage the election, and do it as the duty of my place.

Mr. *Williams.* Who manages the election?

Com. Serj. I manage the election; I declare what is my opinion of the election in the hall; and I come and make report to my lord mayor in this course; then my lord mayor, and the aldermen, and the recorder, come down again. I remember particularly when sir Robert Clayton was lord mayor, it was about the choice of Mr. Bethel and Alderman Cornish, and there was a great disturbance in the hall; then I came into the court, and after I had made my report, I offered to give the paper to the recorder that then was, sir George Jefferies. He told me, that the people would not hear him, and therefore he would not take the paper. Upon that sir Robert Clayton said to me, pr'ythee, do thou speak to them; they will hear thee, if they will hear any body; for the hall was in a great uproar, and they called to throw

me off the hustings, and then I made an answer to Sir Robert Clayton; Sir, it is not the duty of my office, and when I do any thing that is not my office, I shall expect particular directions. Then, saith he, you must tell them, I must adjourn them till Monday, because I go to the Old-Bailey to try the assassinates of Arnold. Thereupon the hall was adjourned, and proclamation made to depart; and my lord mayor attempting to go, was beat back twice or thrice, but at last they let him and the aldermen go, and kept the sheriffs and me till evening. At last Mr. Papillon came up to me; Mr. Papillon, says I, I am glad to see you, you will hear reason. Says he, why do not you go on with the poll? I told him, my lord mayor had adjourned the hall. Says he, I did not hear it before; but now you tell me so, I will go out of the hall. Says I, Sir, you will do very well to tell the hall so; which he did, and some went away; and further adjournments were made by the direction of my lord mayor.

Att. Gen. I would ask you a question or two: Who do you look upon to be the chief magistate of the city?

Com. Serj. My lord-mayor, Sir.

Att. Gen. Pray, in all your time till this, was there no uproar? Did ever a y sheriff undertake to controul the mayor in the business of putting questions, or taking votes?

Com. Serj. Sir, there was never any dispute till Mr. Sheriff Bethel was upon the hustings, and then there was.

Att. Gen. As whose officer did you do it?

Com. Serj. My lord-mayor's, and the city of London's; I have nothing to do with the sheriffs; for when there is a writ comes for the choice of parliament-men, directed to the sheriffs, I never do it, but Mr. Secondary.

Att. Gen. I speak of latter disturbances.

Com. Serj. The first dispute about sheriffs, since I was common serjeant, was about Mr. Jenks, and that poll was taken by the direction of the lord-mayor, by the town clerk, and myself; and our books say, If there be a dispute in the common hall, it must be decided as in the common council. It is in *Liber albus*.

Att. Gen. Liber niger.

Serj. *Jeff.* No, *Liber albus.*

Att. Gen. Liber albus? It is *Liber niger*, they turn the white book into a black book now.

Sir *Fr. Winn.* At that time, Sir, when my lord-mayor was willing to go to the Old Bailey, Did the sheriffs do any thing farther?

Com. Serj. The sheriffs did not meddle in the matter.

Serj. *Jeff.* Mr King, pray give my lord and the jury an account of what you know of this matter.

Mr. *Peter King.* I have been at a court of common hall 28 years, my lord, and have been concerned; I never looked upon the sheriffs to have any concern there. And I do very well remember sir George Jefferies; I do remember and know, they did always in ancient times take advice of the officers by, and they never did esteem themselves in those days, to be any more concerned than as the best officers to be preferred before the rest: When my lord says, Come up, they come in order, the masters and wardens of the companies.

Att. Gen. Who did do the business upon the hustings?

Mr. *King.* All of them, Sir, all together.

Att. Gen. Was there never any difference about the votes?

Mr. *King.* Sometimes they have stood upon it.

Att. Gen. When there was a question made to know who had the most, who decided it?

Mr. *King.* They generally asked one another, What do you think, and what do you think? I speak for 20 years together since the king came in.

Att. Gen. I hope in God there hath been a king in England for 20 years, though perhaps some of the sheriffs that were then in debate, would have had none.

Mr. *Thompson.* Mr. King, I only desire to know this of you, because I know you know questions; I desire, my lord, to know whether he speaks it to be a matter of right, or his opinion; for we know Mr. King's opinion will go a great way in this matter: Do you speak it as a thing of right, or as your conceptions?

Mr. *King.* Sir, it would be a thing very confident in me to determine of the right, but only as I always esteemed it.

Serj. *Jeff.* Mr. King, I would ask you this question; Pray do you tell your belief upon the observation that you have made from time to time of the practice there?

Mr. *King.* An hundred and a hundred common halls I believe I have been at.

Mr. *Thompson.* That's good store.

Serj. *Jeff.* That may be when there are many fines; when I was common serjeant, there were 5,000*l.* fines one year.

Sir *Fr. Winn.* I desire you to give your opinion; you say they are all equal that are there.

Mr *King.* Every officer in his degree: for if 20 men go together, he that is best speaks first.

Att. Gen. Were the sheriffs allowed to be there, or no?

Mr. *King.* The sheriffs are always bound to attend my lord-mayor by their oaths, unless they have lawful excuse.

Mr. *Jones.* Mr. King, did the sheriffs ever continue the assembly after it was dissolved?

Mr. *King.* No, Sir.

Mr. *Jones.* Or could they do it?

Mr. *King.* I can't say that.

Mr. *Thompson.* Did you ever know my lord-mayor adjourn the court til the hall had done?

Mr. *King.* I can't tell.

Mr. *Thompson.* I tell you, Sir, sir Samuel Starling did.

Serj. *Jeff.* But the sheriffs could not do it.

Mr. *Thompson.* Nor he neither; for he paid for it.

Mr. *Holt.* Mr. King, I ask this question; Who declares the poll in the hall?

Mr. *King.* The common serjeant.

Mr. *Holt.* Who directs him usually?

Mr. *King.* His office directs itself.

Mr. *Holt.* I ask, if the sheriffs don't agree, who is elected before the common serjeant make proclamation.

Mr. *King.* They always agree, unless it be very clear; I have known the common serjeant do it several times without disputing.

Com. Serj. When persons are put in nomination, and the hands are held up; I generally ask the people about me, who have most, and particularly the sheriffs, and so make declaration.

L. C. J. The officers ask one another, who they think has most? That doth not give them the jurisdiction, that they choose officers without the lord-mayor or sheriffs: But, for aught that I see, these officers have had more to do about the choice than the sheriffs have. These officers consult one with another commonly, and conclude which side have most; and then report it to my lord-mayor.

Serj. *Jeff.* First of all, when they put any question for any officer in the common hall, the usual way of putting the question is, 'As 'many of you as would have such a man to 'be such an officer, hold up your hands:' And if the election be clear, proclamation is made presently. If not, the common serjeant asks, 'Who they think hath the majority?' Which being declared, they acquiesce. But since Mr. Bethel came in, there have been very hot disputes in the world; but before his time there were attempts made to keep sheriffs off, but never before to get sheriffs on. And after the election is declared below, immediately they go to my lord-mayor, and report it to him: And then comes down the mayor and aldermen to the hustings, and the Recorder says, 'We are in-'formed, that such and such persons have 'been put in nomination, and the election 'passed upon such and such.' And then the lord-mayor commands the assembly to be dissolved.

Mr. *Wells.* When a common hall is first met together, are not the lord-mayor and aldermen generally present?

Com. Cryer. At the first meeting.

Serj. *Jeff.* When they are set, give an account what proclamation is there made.

Att. Gen. How long have you known it?

Com Cryer. I have been in this place almost 17 years; I always come with my lord mayor; I do make proclamation by order of my lord mayor, dictated by the town-clerk; and I take the words from the town-clerk; and his words I say; 'You good men of the 'livery, summoned to appear here this day, for 'the confirmation of such a one chosen by my 'lord mayor, and another fit and able person, 'to be sheriffs of the city of London, and 'county of Middlesex for the year ensuing, 'draw near, and give your attendance.' I never adjourned the court in my life, but by order from my lord mayor; nor never dissolved the court, but by order from my lord mayor.

Serj. *Jeff.* Mr. Common Cryer, I would fain know this; when my lord mayor is gone, and the aldermen, during the election, do you ever dismiss the court before my lord comes down again; and do not you take the very words of dissolution from the town-clerk?

Com. Cryer. I do so.

Serj. *Jeff.* And what is usual in your time when sheriffs have fined off; who gave directions for a common-hall?

Com. Cryer. My lord mayor, Sir.

Att. Gen. Who is it puts the question, the common serjeant or the cryer?

Com. Cryer. The common serjeant dictates the words to me, and I never take them from any other; I have taken the paper into my own hands, but never but one year neither, when they were in a confusion; the time when Mr. Bethel was chosen there was some difference, I did read the names that time, and never but that one time. I always take the words from the common serjeant; I never put any vote, but what I have from the common serjeant.

Att. Gen. Do the sheriffs put any vote?

Com. Cryer. Never, Sir.

L. C. J. I do not understand him; I think he did mean, when Bethel was chosen, he put the question by somebody else.

Serj. *Jeff.* No, no, he took the paper in his hand. Before he used to take dictates from the common serjeant; but there was a confusion when Bethel was chosen, and then he took the paper from the common serjeant and read it.

Com. Cryer. He gave the paper into my hand.

Com. Serj. My lord, they made such a noise, that he could not hear me.

Mr *Williams.* Mr. Wells, how long have you been common cryer?

Com. Cryer. About seventeen years.

Mr. *Williams.* In all that time did you ever hear the lord mayor adjourn the court to a certain day?—*Com. Cryer.* Yes.

Mr. *Williams.* To a certain day?

Com. Cryer. My lord mayor adjourned this common hall to a certain day.

Mr. *Williams.* I ask you upon your oath again, Did you ever know the lord mayor adjourn a common hall to a day certain?

Serj. *Jeff.* Do you remember that of sir Robert Clayton's?

L. C. J. If so be they be adjourned, to meet upon a new summons, if there be occasion, no question but he may to a certain day.

Mr. *Williams.* Now we are upon matter of fact.

Sir *Fr. Winn.* Did you ever know my lord mayor adjourn them before the election of sheriffs was over? Here is my question, observe it. When after once my lord mayor is gone out of the hall, when the election begins, did you ever know my lord come and disturb the election, or adjourn it before it was done?

Com. Cryer. I never knew any thing of it before now.

Att. Gen. Mr. Wells, do you remember that instance in sir Robert Clayton's time?

Com. Cryer. No, Sir.

Att. Gen. Have not you known my lord mayor dissolve the court before the business hath been done; take up his sword and be gone?

Com. Cryer. When he hath a mind to adjourn the court, and declare it, I adjourn it by his order.

Att. Gen. But have you not known him take up his sword, and be gone before the election is over?

Com. Cryer. Sir Robert Clayton did do that before the business was done,

Mr. *Thompson.* Mr. Wells, do not you remember, in sir Samuel Starling's case, that he did adjourn the hall?

Com. Cryer. He dissolved the hall.

Mr. *Thompson.* Very well.

Serj. *Jeff.* He did dissolve the hall, and so hath every lord mayor since. My lord, if your lordship please, I perceive this gentleman makes a question, Whether ever there was an adjournment of a common hall before such a time as the election of sheriffs was over. I will give you an answer to that question, and a very fair one, and a plain one; I say, till the time of Bethel, in sir Robert Clayton's mayoralty, there was never such a thing as a poll for sheriffs.

L. C. J. Silence, that we may hear.

Mr. *Williams.* My lord, we only ask a question, we ask a question and take our answer.

Serj. *Jeff.* Will you give us leave to go on, Sir?

Att. Gen. Sir William Hooker, Pray how long is it since you were sheriff of London?

Sir *W. Hooker.* About 16 or 17 years ago.

Att. Gen. You have been sheriff and lord mayor of London: I would only know, Whether you looked upon it as your right when you were sheriff?

Sir *W. Hooker.* No, nor ever durst presume to think it: In those days it was not thought upon.

Att. Gen. When you were lord mayor, did you order summons for common-halls?

Sir *W. Hooker.* Always.

Att. Gen. Did you ever use to consult with your sheriffs when to call a common hall?

Sir *W. Hooker.* Never; and I think no such thing was ever heard of under the sun, till of late.

Mr. *Thompson.* Sir W. Hooker, did you ever adjourn the court before the business was done?

Sir *W. Hooker.* I never saw any such occasion; rebellion was not ripe then.

Att. Gen. Sir William, pray thus; Have you ever in a common council, or common hall, known my lord mayor rise before the business was done, and take his sword.

Sir *W. H.* I confess I must own it, that when things grew to a great height, I was forced once in this place to cause the sword to be taken up and go out, and the court was dissolved, and durst not go on after I was gone.

Serj. *Jefferies.* Now, my lord, if your lordship please, I desire to call the sword-bearer.

Mr. *Williams.* Sir W. Hooker, if I may, without offence, ask you, how old are you?

Sir *W. H.* Seventy years of age, Sir.

Mr. *Williams.* You say you never knew rebellion ripe?

Sir *W. H.* Good sir, I perceive you are very apt to mistake; I lived in 1641 and 1642.

Att. Gen. Sir William, can you remember the meeting in 1648?

Sir *W. H.* Ay, very well.

Att. Gen. Then they usurped the very same power, and an act of parliament to confirm it.

Serj. *Jefferies.* My lord, I desire Mr. Sword-bearer may be sworn.

Sir *Fr. Winn.* Pray, Sir, in all the time that you have been acquainted with the customs of London, did you ever know when there was an election for sheriffs, that the lord mayor did interpose or meddle till the election was over?

Sir *W. H.* Sir, of late years I have not appeared, because of an infirmity, I cannot be long in London: but in all that time I used to appear, I never did observe any such thing.

Sir *Fr. Winn.* That the mayor ever meddled?

Sir *W. H.* Nay, Sir, that the sheriffs ever meddled. When I was sheriff of London, I durst not presume to meddle, but left the whole to my lord mayor.

Sir *Fr. Winn.* Did you ever know, when the election of sheriffs was in a common hall, that the lord mayor offered to disturb them till the election was over?

Sir *W. H.* Truly I do not remember any such thing. Sir Fr. Winnington, I would give you a full answer; I do tell you, as it hath been declared, my lord mayor and aldermen come into the court, and a report is made; when this is done, they leave the management of the affair to others; we come and sit down till it is done.

Sir *Fr. Winn.* To whom do you leave the concernment?

Sir *W. H.* To the officers that it belongs to.

Sir *Fr. Winn.* Who are those officers?

Sir *W. H.* I never heard it disputed till just now.

Mr. *Jones.* Sir W. Hooker, you have been an ancient citizen: Do you remember, that ever the sheriffs presumed to hold this court?

Sir *W. H.* No, never in my life.—You may confound any man at this rate.

Mr. *Williams.* Pray, Sir, in your time was there a poll for sheriffs in London?

Sir *W. H.* Truly not as I remember.

Mr. *Williams.* Do you remember any poll in your time? If you don't remember a poll, you can't remember who took it.

Sol. Gen. Pray, sir W. Hooker, do you ever remember the sheriffs appointed the common serjeant to take the poll?

Sir *W. H.* Never in my life.

Serj. *Jefferies.* Mr. Sword-bearer, I won't ask you how old you are: I desire to know how long you have been an officer in this city.

Sword-bearer. Three and twenty years.

Serj. *Jeff.* I desire to know in all your time who ordered common halls? Who gave direction for the summoning common halls?

Sword-bearer. My lord mayor always.

Serj. *Jeff.* Did my lord mayor use to send for the sheriffs, to know of them when they would be pleased to have a common-hall?

Sword-bearer. I never knew that the sheriffs did interpose in calling a common hall in my life.

Serj. *Jeff.* Mr. Sword-bearer, at such time as the business was done, when the common cryer had directions for dissolving the common hall, pray who used to give these directions all along?

Sword-bearer. It was done by the town clerk, and my lord mayor's officers.

Serj. *Jeff.* Did ever the sheriffs continue the hall after my lord mayor had adjourned it?

Sword-bearer. Truly I know no such thing.

Mr. *Thompson.* Mr. Sword-bearer, I would ask you one question: If in case the common serjeant, or the common cryer, or any other officers do put a question that the commons would not have put, who orders them to put the right question?

Sword-bearer. I can't say any thing to that.

Att. Gen. After the common serjeant comes up and reports what is done, then what doth my lord mayor do?

Sword-bearer. My lord mayor and the aldermen go down to the hustings, and it is declared by the recorder, or the common serjeant, by the order of my lord mayor.—I think my lord mayor went once down to give them some satisfaction upon a dispute.

Sir *Fra. Winn.* Mr. Man, during the election did you ever hear them adjourned before it was over?

Sword-bearer. No, Sir; nor never heard any occasion for it.

Mr. *Williams.* The common serjeant affirms himself to be a servant to the commons, and not to the lord mayor and aldermen; have you known a common serjeant say, he was a servant to the commons, and not to the lord mayor and aldermen?

Sword-bearer. I never was in a common hall upon any such dispute, I am with my lord mayor.

Serj. *Jeff.* I have known a recorder reprehended by a very learned lawyer, for saying, 'My masters the aldermen.'

Sir *Fra. Winn.* I ask you who hath the management of the common hall in the absence of the mayor.

Sword-bearer. I am always there waiting upon my lord mayor.

Serj. *Jeff.* My lord, if your lordship please, we will rest here as to point of right. Now, my lord, in the next place we will come to that which is a more immediate question before you, and we will prove the manner of it, and the persons that are guilty; for that is the next step we are to go,—Mr. Bancroft.

Mr. *Williams.* My lord, they have said in the information, That the sheriffs are duly elected, for one year next following, from the eve of St. Michael; now prove your election to be for that year you have laid in your information.

Mr. *Thompson.* My lord, they have certainly in fact mistaken their information. My lord, they do declare that the common hall was held, according to custom, for the election of sheriffs, to hold that office from the eve of St. Michael, for the year next ensuing; Now, my lord, that is not so in fact, nor never was, for the election is for a year to commence on Michaelmas day. They take on the eve the office upon them, but they do absolutely exercise the office for a year from that time from the eve. Now my lord, we say, that day is excluded, we are sure it is a common case, it is known very well; as in a lease, the Habendum from any date, the day of the date is no part of that lease, it is exclusive and no part of the term, and therefore, my lord, if they do not prove it as they have laid it, we hope they will be nonsuited.

Sol. Gen. That is another piece of law.

Mr. *Holt.* The eve of Michaelmas day, we make this objection, and put you to prove it.

Serj. *Jeff.* Give us leave to go on; Gentlemen, let us prove what we think fit; and if we have not made it out, then make your exceptions.

Mr. *Holt.* Mr. Serjeant, I think it is proper to put it now, for if there be no such election, there can be no such riot; for they have made it a riot in a special manner.

Serj. *Jeff.* Mr. Holt, under your favour, it is not a time now.

Att. Gen. This is the oddest way: these gentlemen take upon them so: I will not prove it; and pray be quiet till I come to my time.

Sir *Fra. Winn.* Pray, Mr. Attorney, if we have an objection to make, if the court pleases we may be heard.

Serj. *Jeff.* Certainly it was never known, that when Mr. Attorney exhibited an information, to tell us how to prove it. Surely, gentlemen, you will give us leave to go on with our proof, won't ye?

Mr. *Molloy.* Mr. Bancroft, How long have you been a servant of the city? by whose order was the hall summoned?

Mr. *Bancroft.* By my lord mayor's.

Mr. ——. Who hath dissolved them?

Bancroft. My lord mayor.

Mr. ——. Did you ever know the sheriffs give any order for the dissolving of it?

Bancroft. No.

Mr. *Thompson.* Did you ever know it dissolved before the business was done for which they were called? Did my lord mayor in your time either dissolve them, or send them going, till the election was over.

Bancroft. I can say nothing to that.

Att. Gen. Mr. Bancroft, I would ask you this, Sir; did the sheriffs ever continue the hall after my lord mayor had dissolved it?

Bancroft. No, I never knew that in my life.

Sir *Fra. Winn.* Mr. Bancroft, I would ask you a question; I don't ask you who calls them, or bids them go home; during the time of the election did my lord mayor ever meddle?

Bancroft. My lord mayor withdraws.

Sir *Fra. Winn.* Who are those among the commons, that manage the business when my lord mayor withdraws?

Bancroft. The sheriffs, and the common serjeant, and the common cryer.

Sir *Fra. Winn.* Who manages the election? who declares the election? who declares who is chosen?

Bancroft. When the election is made below, then the sheriffs come up, and the common serjeant, and the common cryer along with them, and acquaint my lord mayor, and he goes down, and there doth confirm the election; and withal, when the work is done he dissolves the court.

Mr. *Williams.* Did you ever know a poll for sheriffs?

Mr. *Thompson.* Do you take the common serjeant to be an officer of the commons of London, or an officer of my lord mayor's?

Bancroft. I cannot be certain what he is.

Mr. *Thompson.* If in case the common serjeant differ from them in declaring the poll, it is not usual for the common hall to order him to put it up again?

Serj. *Jeff.* Who does make a judgment of the election, the common serjeant, or the sheriffs?—*Bancroft.* The sheriffs.

Serj. *Jeff.* Does not the common serjeant make observation as well as the sheriffs?

Bancroft. The sheriffs give their opinions in it.

Serj. *Jeff.* Now, my lord, if your lordship please, if they had done, we would desire to go on to our fact; for otherwise, for ought I perceive, we shall be in here till this time to-morrow, and they say, we must not adjourn till the cause is over. Mr. Common Cryer; hark you, Mr. Common Cryer, were you present at Midsummer day when this business happened? Give my lord and the jury an account of the carriage then.

Com. Cryer. I was there at the beginning of the election; I did make proclamation, and afterwards there was a poll demanded, and the poll was begun, and I went home with my lord mayor; afterwards my lord mayor came back again, and there was a hubbub; but about five or six a clock, my lord mayor came down upon the hustings, and I adjourned the court till another day; I did adjourn it by his order, according as I used to do, and then I went away with my lord mayor.

Att. Gen. But what usage had you in going out?

Com. Cryer. I went before my lord mayor, I was not with him.

Mr. *Williams.* Where was the adjournment?

Com. Cryer. Upon the hustings.

Mr. *Williams.* Were the sheriffs polling the people then?

Com. Cryer. I don't know that, Sir.

Mr. *Williams.* Were the sheriffs near the hustings?

Com. Cryer. I don't know, I saw them not.

Sir *Fra. Winn.* Upon the election of them, when my lord mayor came to adjourn the court, were the sheriffs acquainted with it? Where were the sheriffs?

Com. Cryer. My lord mayor sent to them.

Serj. *Jeff.* Mr. Weston, Pray will you tell my lord and the jury what directions you had from my lord mayor, and how he was used when he came out of the hall?

Mr. *Weston.* My lord mayor sent me, my lord, to the sheriffs under the Lombard-House twice to come up to the council chamber, and they told me: One told me he was upon the king's business, and the other said he could not come; and about half an hour after, my lord, sheriff Pilkington came up to my lord mayor into the council-chamber, and then immediately came down to the court of hustings, and Mr. Common Cryer, by my lord mayor's order, did adjourn the court from Saturday till Tuesday following; and as we were coming out of the hall, when Mr. Common Cryer had adjourned the court, and said, God save the King, a great part of the hall hissed; and, but that there were so many honest gentlemen about my lord, I was afraid my lord would have come to some mischief; but coming to go into the Porch-yard, I saw his hat off, and I went to catch his hat, and caught one of his officers by the head, that was knocked down or fell down, that held up his train. My lord, the sword was at that distance, farther than it is between your honour and where I stand, and crowded far away; and when my lord came out into the yard, Gentlemen, says he, I desire you would go home to your lodgings, and commanded them in the King's name to depart: And, says he to me, Pray go you back, and let the sheriffs know, and tell them I have adjourned the court till Tuesday. Upon my lord's command, I went back to let the sheriffs know, that my lord had adjourned the court till Tuesday.

Serj. *Jeff.* Both of them, both Shute and Pilkington?

Weston. No, Shute; the other was by.

Serj. *Jeff.* It was in his hearing, was it not?

Weston. It was in his hearing.

Serj. *Jeff.* Did you see my lord mayor down and his hat off?

Weston. I saw his hat off, sir George, but I cannot tell how it came off.

Mr. *Williams.* You say, you saw my lord's hat off; can you tell whether my lord was so courteous to take his hat off or no?

Weston. I dare say, my lord did not.

Mr. *Williams.* Did he, or no? I ask you upon your oath?

Weston. I can't tell that, Sir.

L. C. J. I can't think that those gentlemen were so extraordinary civil to my lord mayor, that when the common cryer made proclamation God save the King, that there should be

hissing; those that hiss'd were not extraordinary civil to my lord mayor, and I believe you don't think so neither.

Mr. *Williams.* I ask you a question. My lord mayor's hat was off—

L. C. J. Ay, and it must be supposed it was to compliment those fine men that hiss'd at God save the King.

Serj. *Jeff.* My lord, if your lordship pleases, I would desire to know what account any of them can give of the opinion they had of the king, to be sure they had a great opinion of his representative: But my lord-mayor, I find, was so extraordinary civil, that to this rabble he must not only pull off his hat, but fling his hat to the ground to them.

Mr. *Thompson.* I ask you whether you know that any of the defendants in this information did throw my lord-mayor's hat off, or no?

Weston. I can't say that.

Serj. *Jeff.* It is not a farthing matter.

Sir *Fr. Winn.* Here is a mighty riot upon the hat.

Weston. Now I desired them to keep back; my lord mayor's friends did press back as much as they could, to preserve my lord-mayor; they pressed more forward, as the other kept back, and I desired them to forbear, nay, commanded them in the king's name, and upon their peril, and took my cane to strike at some of them.

Mr. *Williams.* Did you?

Serj *Jeff.* He served them well enough.

L. C J. He did so. Do you think a magistrate is to be crowded and pressed upon?

Weston. I struck at them, and said, gentlemen, keep back, and intreated them and commanded them, and all would not do.

Serj. *Jeff.* I would only say this, Mr. Common Serjeant; What did you hear when proclamation was made to depart?

Com. Serj. My lord, I was not in the hall when proclamation was made; but I heard them cry out, 'No God bless the king;' and I heard them cry out, 'Down with the sword; 'No lord mayor, no king.'

Mr. *Williams.* Can you name any person that said this?

Com. Serj. My lord, I laid hold on one man that cried, 'No God save the king; No lord-mayor,' and the rabble got him from me, one that I heard say so

Mr. *Williams* Mr. Common Serjeant, you say you heard this; can you name any person?

Com. Serj. I tell you I caught hold of him, and the rabble got him from me.

Mr. *Williams.* Can you name any one?

Com. Serj I tell you I cannot.

Serj. *Jeff.* My lord I hope that will not much prevail in this place; but I hope it doth justify my lord-mayor for endeavouring to disperse the rabble that came together to that height when the king was prayed for, to cry out, 'No 'king, No lord-mayor.' And we don't give this in evidence against any one person, for it was done in a tumultuous manner; but they were so fond of this man, as that they rescued him from him; and to fix it upon them, we will prove they were every one of them concerned in the riot. Mr. Craddock, What account can you give of this matter?

Mr. *Craddock.* I was standing at the place where they polled, and my lord-mayor was coming towards it to protest against their manner of proceeding; and sheriff Bethel came to me and said, 'Resist him' (I think) 'he 'hath nothing to do here.'

Serj. *Jeff.* That was Bethel, Slingsby Bethel?

Craddock. It was either oppose, or resist him.

Sol. Gen. He says he thinks he said, resist him; but he is sure it was either oppose, or resist him.

Serj. *Jeff.* Did you see Mr. Jenks there?

Craddock. I can't say I did: I saw Mr. Jenks just as my lord-mayor came down, not after.

Serj. *Jeff.* Did you see Mr. John Deagle there?—*Craddock.* I did not see Mr. Deagle.

Att. Gen. How did they use my lord-mayor?

Craddock. I was not very near my lord; my lord, I stood at the place where the poll was taking.

Mr. *Thompson.* Mr. Craddock, we desire to ask you this question, that you speak particularly to Mr. Bethel; was it before my lord-mayor had adjourned the poll, or after?

Craddock. It was just as my lord-mayor came to protest against the manner of polling.

Mr. *Thompson.* Was the poll adjourned before or after?—*Craddock.* It was after.

Mr. *Williams.* Mr. Bethel, you say he said, oppose, or resist; did he say it was before the poll was adjourned?

Craddock. Yes, Sir, it was before.

Mr. *Williams.* Can you say what the words were?

Craddock. It was either oppose or resist, he hath no authority here.

Serj. *Jeff.* Which is George Reeves? Mr. Reeves, Pray will you tell us what you did observe done at this time by Mr. Pilkington, or Mr. Shute, or any person else?

Mr. *Reeves.* I came about 4 or 5 o'clock to the polling-place where the coaches use to stand, and I saw the sword up; I suppose my lord-mayor was there, and came to stop their proceedings in polling; and there was a great contest among them; some saying, He had nothing to do there: He hath no more to do than I, says one; another cried, Stop the sword, stop the sword; and I laid hold of him, and got him a little way, and made account to have carried him to the sheriffs, and the lord-mayor, but somebody got him away.

Serj. *Jeff.* What did you observe Shute and Pilkington do?

Reeves. They encouraged the people to poll.

Mr. *Jones.* After my lord-mayor was gone?

Reeves. Yes.

Mr. *Jones.* Pray you, Sir, did you observe either Mr. Shute or Mr. Pilkington encourage the people to hollow or shout, or those things?

Reeves. No, Sir.

L. C. J. Hark you, friend Reeves, hark you, How do you know that Pilkington or Shute were polling? Are you sure they were polling after my lord was gone?

Reeves. They were at the polling-places, and they did not go away a great while after that.

L. C. J. From the people that were about them?—*Reeves.* No.

Sir *Fra. Winn.* We agree it; in fact it was so.

Att. Gen. Richard Fletcher, pray will you give the court an account of what they did?

Serj. *Jeff.* John Hill, what did you observe there?

Mr. *Hill.* About five o'clock my lord mayor came to the hall; there was with him then sir James Edwards, and sir William Pritchard, now lord mayor, to the best of my memory, and he told them he disliked their polling any more; and there came a tall black man; says he, Mr. Sheriff, go on, it is your business, we will stand by you: about a quarter of an hour after my lord came out of the hall to the great crowd, some of the people hissing, and some making a noise; and one came to the sheriffs, and, says he, gentlemen, Why do not you make proclamation with O yes? And they continued there till towards eight o'clock.

Serj. *Jeff.* Did you hear no officer adjourn the court?

Hill. My lord mayor went home, I saw him within doors, and I came back again.

Att. Gen. Was there no proclamation made afterwards?

Hill. By some of the officers, but I did not take particular notice.

Att. Gen. Who did you see here after you went home with my lord mayor, and came back again?

Hill. I saw here Mr. Robert Key for one; and I saw Mr Goodenough come in between eight and nine here in the hall; and my lord Grey came in, and several other gentlemen.

L. C. J. What did they do when they came?

Serj. *Jeff.* Hark you, Hill: was my lord Grey and Mr. Goodenough, and Mr. Key, were they among the people?

Hill. After the sheriffs came up, they went into the Orphan's court; Mr. Goodenough came in and out; and my lord Grey went in to them.

Serj. *Jeff.* Did they appear among the people up and down in the hall?

Hill. They went through the hall to and fro.

Sir *Fra. Winn.* What was the Christian name of that Goodenough?

Hill. I know him; he that was under-sheriff last year: I know him well enough, and he knows me; yes, that is Mr. Goodenough?

Lord *Grey.* I desire to ask this witness a question, my lord.

L. C. J. Let your counsel ask, my lord.

Serj. *Jeff.* I desire to know another question, Did you see Mr. Cornish?

Hill. I saw Mr. alderman Cornish walk in the hall; but I can't tell whether he went into the room or no. After my lord was gone, he did come up into the mayor's court, and came through among the people.

Mr. *Thompson.* Hill, you speak of my lord Grey; upon your oath did you see my lord Grey walk to and fro in the hall, or only came thorough?

Hill. My lord Grey came in at that gate, and went thorough the hall, and went in to the sheriffs.

Mr. *Williams.* I would ask you this upon your oath. Did you see him do any thing more?

Hill. No; I was there to discharge my office.

Lord *Grey.* My lord, I own my being there; but only desire to ask a question that will clear this matter.

Mr. *Hill.* I saw my lord Grey come up to those stairs, and he went into the Orphan's court.

Serj. *Jeff.* How long might that be after the poll?

Hill. After the sheriffs came up, I believe it might be half an hour, or a quarter of an hour, near an hour.

Mr. *Williams.* Did you see my lord Grey do any thing more than walk?

Mr. *Hill.* I saw him come to the Orphan's court, and they would not open the door at first; but they said it is my lord Grey, and then they let him in.

L. C. J. Your own counsel is asking, my lord; I am willing you should ask a question if your own counsel will let you. Gentlemen, my lord would ask a question himself, and you won't let him.

Lord *Grey.* My lord, though I do not know this gentleman at all, yet I will venture to ask him a question. Pray, Sir, did you see me speak to any one man?

Hill. I have answered that already; I say not.

Lord *Grey.* Were the books brought from the polling place by the sheriffs before I came, before that I went in there? My lord, I was there, and shall give you an account of it.

L. C. J. It had been better, my lord, if you had kept away.

Serj. *Jeff.* Fletcher, pray will you tell my lord and the jury, what you observed that day here, after my lord mayor was gone, and had adjourned the court?

Fletcher. On the 24th of June I was here by order of sheriff Shute, after my lord mayor had adjourned the court, and it was to call all men that were to poll to come forward, for the books were to be shut up, and I went away immediately; I was very hot, and went away to the Three-Tun tavern.

Serj. *Jeff.* Did you see Mr. Shute there?

Fletcher. Mr. Pilkington was there, Mr. Shute too.

Serj. *Jeff.* Can you name any body else?

Fletcher. No; I can name nobody else.

Serj. *Jeff.* What did Mr. Shute say?

Fletcher. He ordered me to make proclamation for all men, them that had a right to poll, to come and poll, for the books were to be shut up.

Serj. *Jeff.* Captain Clark, pray will you give an account of what you observed?

Capt. *Clark.* I came down into the hall, and I did hear a whispering, whereupon I went to guard my lord mayor; my lord mayor came down upon the hustings, and proclamation was made for the adjournment of the court; whereupon when proclamation, God save the king, was made, an hundred, &c. I believe more, hist at that; I laid hold of one of them, No king's-man, no sword's-man, cried they. Sirrah, you are a rascal, and a traitor in your heart, said I, and laid fast hold of him; but there was a very great crowd; and says one or two, For God's sake, captain Clark, do you guard my lord; there was Mr. Weston and major Kelsey; my lord, said they, is in danger; said I, Gentlemen, keep by him, or go before, I will be in your rear guard. My lord mayor was down upon his knee, I can't tell how he came down; Press on, press on, this was the cry, and God save the sheriffs. After coming down the steps, I pressed as near as I could to my lord mayor, to keep them off; Now, said I, this is the time to keep the rabble off, now face about; I had my sword in my hand, and with the pommel of my sword kept them off; Before God, said I, I will keep you off; and so I waited on my lord home, and I went and drank a glass of sack. About an hour or two hours afterwards, I came down to the hall and found the people shouting, God save the sheriffs, God save the sheriffs: what nothing, said I, of my lord mayor? But, said I, this is not a place to quarrel in, let us not quarrel together. I saw the sheriffs Pilkington and Shute were concerned in carrying on the poll, and thus they continued to do for some time; at last, I am weary of the hall, said I, I will go home; and this was between eight and nine o'clock.

Serj. *Jeff.* Can you remember any body else besides the sheriffs?

Capt. *Clark.* No, Sir, I cannot.

Serj. *Jeff.* Can you remember sir Thomas Player?—Capt. *Clark.* No, I can't.

Serj. *Jeff.* Captain Clark, did you know never-a-one of them that cried out so?

Capt. *Clark.* No, my lord, I was before sir Robert Clayton.

Serj. *Jeff.* Major Kelsey, Pray will you give my lord and the jury an account of what you saw on Midsummer-Day?

Major *Kelsey.* My lord, when my lord came out of the court, I went after, and some cried, Stop him, stop him; but I got between them, and some of my lord's friends kept them off; but when we came just to the going out, they gave a shout, and I saw my lord mayor's hat upon his back, and I cannot tell whether he touched the ground with his hand, but I was even almost down; said I, Gentlemen, do you intend to murder my lord mayor?

Serj. *Jeff.* Who did you see there?

Major *Kelsey.* Indeed, Sir, I was almost down, and did not see their faces.

Serj. *Jeff.* Mr. Trice Hammon, I would only ask you, who did you see, who did you observe to be there?

Mr. *Hammon.* About nine o'clock at night, or something before, I stood at the door that leads to the common pleas*, and there came in alderman Cornish and Goodenough, and old Key, an old white-haired man; and by-and-by my master sheriff Shute came out and told me, I shall give you all satisfaction by-and by. God bless you, Mr. Sheriff, said I; and he went again, and there I staid till they came out, and then he went up on the hustings; and I went along with him when he came out.

Serj. *Jeff.* Who went with him out to go to the hustings?

Hammon. Sir William Gulston, and several other men; there is never a name in the indictment more.

Serj. *Jeff.* None of them that are in the indictment? Name them.

Hammon. I have named them.

Serj. *Jeff.* Prithee name them.

Hammon. Mr. alderman Cornish, both the sheriffs, my lord Grey, Mr. Goodenough, and old Mr. Key.

Mr. *Thompson.* Which Goodenough?

Hammon. That Mr. Goodenough that stands there.

Serj. *Jeff.* There is such a noise, that I did not so well hear that word.

Hammon. Goodenough; not that Goodenough that looks upon me, but he that stands behind.

Serj. *Jeff.* He falls behind now, but he ran up-and-down then; and alderman Cornish was there too.

Mr. *Jones.* You witness, you have named all these men; what did Shute do, or what did he say?

Hammon. When he came upon the hustings, he made proclamation himself, because one or two refused it, he did it himself; and after a while he adjourned the court upon the hustings; this was on Midsummer-day.

Mr. *Jones.* What did he say?

Hammon. As the common cryer usually says at such times.

Mr. *Thompson.* You say you saw Mr. Goodenough, and you saw my lord Grey; upon your oath, can you say they did any thing, or was any thing done in abuse to my lord mayor?

Hammon. They did not tell me, my lord, what they did.

Mr. *Thompson.* I ask you what did they do?

L. C. J. Mighty busy they were.

Mr. *Thompson.* How long was it after my lord mayor adjourned the court?

Hammon. About two hours.

Serj. *Jeff.* So much the worse.

L. C. J. You must understand it was some

* The same place which before was called the Orphan's court.

time before Mr. Sheriff had made his adjournment, they were busy till that time.

Serj. *Jeff.* My lord, if your lordship pleases, I do agree with Mr. Thompson that the jury should remember that this was two hours after my lord-mayor had adjourned the court.

Lord *Grey.* I desire, my lord, I may ask him some questions. You say you saw me go to the council chamber, at what time, and who went with me?

Hammon. A little before candle-light.

Lord *Grey.* You say all the company went out with the sheriffs, and went away.

Hammon. My lord, I did not say you came out.

Att. Gen. My lord was of the upper-house.

Mr. *Thompson.* Yes, and may be there again?

Lord *Grey.* I hope I shall be there, Mr. Attorney.

Att. Gen. It had better you had been so then, my lord.

Lord *Grey.* It will be the worse for you: I shall not lie perdue for you.

Att. Gen. If you threaten me, my lord, I shall take notice of it. My lord, I have done you a kindness; but if you come under my hands again I shall not do it.

L. C. J. They would not have it said, God save the King; and, my lord, you were with some of those that abused him.

Lord *Grey* After it was over, my lord.

Att. Gen. You were not within your duty here.

Lord *Grey.* My lord, it was after the poll was closed.

Serj. *Jeff.* My lord, I desire, if you please, what is usual in all causes, that we might go on without any interruption. Let us go on for the king, and then make all the defence you can. Do not think either to hiss or threaten us out of our cause. Mr. Higgins, give my lord and the jury an account of what you saw or heard.

Higgins. My lord, I attended with several of our company by my lord-mayor's coach to Guildhall, and was in the council-chamber, and he sent for the sheriffs; and after that he went away; and when God save the King was said, said they, God save the Protestant Sheriffs.

Serj. *Jeff.* I desire to know, Mr. Higgins, this, what they said?

Higgins. They cried, Down with the Sword.

Mr. *Thompson.* Mr. Attorney is making a speech to us, I do not know what he hath said.

Serj. *Jeff.* I do not think Mr. Attorney thinks you worth a speech. Mr. Higgins, I desire to ask you a question, I ask you this question upon your oath, after the adjournment of the court, and after this very insolent behaviour of some of the rabble that were there, for I can call them no better, who did you see there?

Higgins. After I went home, I went to see my lord safe home, and came back again, I saw one Freeman, that they call the Protestant Cheesemonger, calling, To poll, to poll.

Serj. *Jeff.* Pray who else did you see?

Higgins. I saw alderman Cornish come up towards the sheriffs: Gentlemen, said he, You are doing right.

Serj. *Jeff.* Did you hear Mr. Alderman Cornish say so: What, this gentleman? Do you know him?

Higgins. Says he to sheriff Shute, You shall have all right done to you.

Serj. *Jeff.* Who else did you see there?

Higgins. I saw Mr. Swinock.

Serj. *Jeff.* Did you see Mr. Key? Did you see Mr. Pilkington?

Higgins. I did not see Mr. Pilkington: I saw Shute.

Serj. *Jeff.* Did you see Mr. Jekyl?

Higgins. Yes.

Serj. *Jeff.* Which of them do you mean?

Higgins. The elder man.

Serj. *Jeff.* There is John Jekyl the elder, gentlemen; and John Jekyl the younger.

Higgins. I was disputing with a fellow that his toes came out of his shoes, and had a green apron; Said I, Are you a livery-man? Yes, I am, said he. Surely, said I, they do not use to make such as you are livery-men. Says Mr. Jekyl, He may be as good a man as you, for aught I know. That was about half an hour after my lord-mayor went home.

Serj. *Jeff.* What time was the adjournment?

Higgins. About five or six. I was speaking something, You are all in a riot. This is no riot, says Mr. Swinock to me; I can never meet you, but you are railing against the king's evidence.

L. C. J. The king's evidence, what was that?

Mr. *Williams.* What was done by Mr. Jekyl?

Higgins. He was talking among the people.

Serj. *Jeff.* He did encourage among the rest.

Mr. *Williams.* You are in a passion now.

Serj. *Jeff.* No, Sir, I am not.

Higgins. He seconded Mr. Cornish when he said, Insist upon your Rights.

Serj. *Jeff.* Who did so?

Higgins. Freeman, my lord, that they call the Protestant Cheesemonger.

Mr. *Williams.* A very pretty word indeed.

Serj. *Jeff.* Aye, so it is; he is so called; you will give us leave to hear what the witnesses speak.

Mr. *Williams.* Another epithet would do a great deal better.

Serj. *Jeff.* William Bell, what was done upon the spot? Was there any hurt?

Mr. *Williams.* Do you say, upon your oath, that gentleman was there?

Higgins. I have seen him in the balcony.

Serj. *Jeff.* He says, he uses to be there upon public days in the coffee-house.—Bell, I would

desire to know of you, whether you are able to give an account after my lord-mayor's adjournment, who was there? Name as many persons as you can.

Bell. Mr. Bethel; and I saw Mr. Cornish go through the little gate into the yard.

Serj. *Jeff.* Who else?

Bell. That is all, Sir; sheriff Pilkington delivered two poll books into my hand.

Att. Gen. Mr. Vavasor, will you tell my lord and the jury what you saw?

Vavasor. It happened thus: Mr. Hammon had taken a man upon execution, who was bail for a client of mine who had paid the monies long before; upon that I came to know who employed him; and coming here, I found Mr. Hammon in that place, and the croud was so great, Do not go back again, said he, for you will go near to be abused. Whilst I staid there, I asked him what was the meaning; says he, In this room are the sheriffs and some others casting up the poll; and whilst I staid, there came in Mr. Goodenough to and fro from them, and before they would admit any, they would know their names; there was Mr. Key, my lord Grey, and sir William Gulston.

Att. Gen. What afterwards?

Vavasor. Yes, Mr. Cornish was there; he and sheriff Shute came out together, and they went upon those stairs under the clock.

Att. Gen. Who came out with sheriff Shute?

Vavasor. Cornish.

Mr. *Williams.* What Cornish?

Vavasor. Alderman Cornish.

Mr. *Williams.* Very mannerly.

Serj. *Jeff.* His name was Cornish before he was an alderman.

Vavasor. And sheriff Shute told the people, If they would stay a little time, he would give them satisfaction. Upon that, Mr. Cornish went through the company; and when they came to the husting, Mr. Shute ordered proclamation to be made, and told them, Whereas my lord-mayor had taken upon him to adjourn at nine o'clock; We the sheriffs of London and Middlesex, being the proper officers, do adjourn it to Tuesday at nine of the clock. Upon that an ancient gentleman desired they might proclaim the election. Then says Shute, that I cannot do it now, for we have taken very good counsel for what we do. Had it not been for Mr. Hammon, I had been, I believe, trod under foot sufficiently.

Serj. *Jeff.* Mr. Denham, who did you see?

Denham. I saw sir Thomas Player, and Mr. Jenks.

Serj. *Jeff.* Where did you see them, pray?

Denham. In the yard. I went home with my lord-mayor, and then I saw them. I had a kind of glance, but I cannot swear positively to Mr. Jenks.

Serj. *Jeff.* Sir Thomas Player, and Mr. Jenks, what did you see them do?

Sir *Fr. Winn.* Hark you, friend, where was it you saw them?

Denham. In the yard.

Sir *Fr. Winn.* What did you see them do?

Denham. Nothing at all.

Serj. *Jeff.* How many people might there be then? Two or three hundred?

Denham. Above a thousand.

Mr. *Williams.* What did you hear sir Thomas Player say?—*Denham.* Nothing.

Mr. *Williams.* How far was he from his own door?

Denham. On the other side of the hall.

Mr. *Williams.* A mighty way indeed, a mighty thing. What said Mr. Jenks?

Denham. I cannot say, Sir, that I heard him speak a word, only in the tumult.

Sir *Fr. Winn.* Friend, I ask you this; I think I heard you say, you saw sir Thomas Player and Mr. Jenks in the yard, but you did not see them do any thing at all?

Denham. No.

Serj. *Jeff.* Pray, Mr. Farrington, will you tell my lord and the jury what you saw after my lord-mayor had adjourned the court?

Farrington. I saw there Sheriff Pilkington, Shute, sir Thomas Player, Mr. Wickham the scrivener in Lothbury, Mr. Jenks, Babington, one Jennings an upholsterer.

L. C. J. Sir Thomas Player you say in the first place?

Farrington. Yes, and Wickham, my lord, a scrivener in Lothbury.

L. C. J. Who then?

Farrington. Sheriff Pilkington and Shute, and Mr. Cornish, alderman Cornish.

Serj. *Jeff.* Did you see one Deagle there?

Farrington. No, Sir.

Serj. *Jeff.* Wickham you saw there?

Farrington. Ay, Sir, I know him very well.

Mr. *Thompson.* What is Wickham's christian name?

Serj. *Jeff.* John Wickham, he goes by that name, it may be he was not christened. Was Jenks there, do you know him?

Farrington. The linen-draper.

Serj. *Jeff.* Ay, very well, he goes by the name of Francis Jenks. Did you see Jekyl there?

Farrington. I don't know the name; I saw a great many I knew by sight, but not their names.

Mr. *Holt.* What did these gentlemen do?

Farrington. I'll tell you, Sir; there was sheriff Pilkington and sheriff Shute, I went in where they were taking the poll; said I, Gentlemen, my lord-mayor hath adjourned the court, what do you here? I suppose it lies in my lord-mayor's power; if it lies in him to call, certainly he must dissolve.

Mr. *Williams.* You argued thus.

Serj. *Jeff.* Pray give us leave to go on.

Farrington. There was Mr. Wickham, and says he, My lord-mayor hath nothing to do here, neither will we be ruled by any of your tory lord-mayors. This is not the first aspersion, said I, that you have cast upon a gentleman that loves the church and the government established by law; and they fell about

me, and had it not been for Mr. Fletcher and Mr. Hill, I believe they had done me a mischief; for they trod upon my toes; who did it I can't tell.

Serj. *Jeff.* But you say sir Thomas Player, and Pilkington, and alderman Cornish, were amongst them?—*Farrington.* Yes, Sir.

Serj. *Jeff.* That's enough.—Pray Mr. Cartwright, will you tell my lord and the jury what you observed there, and who was there.

Cartwright. I know the names of no persons that were there; all I can say was this: As soon as my lord mayor adjourned the court upon the hustings, he came down, and going out of the hall, he had like to have been thrown down, had it not been for Mr. Shaw; and going to save my lord-mayor, I wrenched my back, and I spit blood for 7 days after.

Serj. *Jeff.* Tell that, Mr. Cartwright, over again.

Cartwright. My back was wrenched in saving my lord-mayor, and I spit blood 7 days after.

Serj. *Jeff.* Endeavouring to save my lord-mayor his back was so wrenched, that he spit blood 6 or 7 days after. Hark you, Mr. Cartwright, ever since that time have you found any indisposition?

Cartwright. I have not been my own man since.

Mr. *Williams.* He took a surfeit.

Serj. *Jeff.* He took a surfeit of ill company I am sure.

Sol. Gen. Mr. Shaw, give my lord and the jury an account of what you know.

Shaw. My lord, my lord-mayor sent to the sheriffs, and ordered them to forbear polling, and come up to the chamber, and sent two or three times; but they denied coming to him, and went on and ordered the Common Cryer to make proclamation for them to depart; and if they staid, that he would look upon them as rioters, and there was hissing and a great deal of crowd; and there was sir James Edwards in the court, they hunched him with their elbows; and as his lordship came down, going down the steps there was such a crowd, that if I had not catched his lordship in my arms, he had fallen upon his forehead, and his hat was off.

L. C. J. Who did you see so misbehave themselves?

Shaw. My lord, I can't tell.

Serj. *Jeff.* I think we have now proved it against every body we design, save only against Mr. Deagle; for we do not now proceed against Dorman, Newman and Benjamin Alsop. Now, my lord, we will only prove against John Deagle, and then we shall have done. Mr. Kemp, will you tell my lord and jury who you saw here? Did you observe any particulars after the court was adjourned?

Kemp. I don't remember I observed any one man.

Serj. *Jeff.* You don't? Had you any discourse with Mr. Deagle at any time?

Kemp. Yes, I had.

Serj. *Jeff.* What did he tell you?

Kemp. He did confess he was there about 7 o'clock at night.

Serj. *Jeff.* He did own he was amongst them?

Kemp. Yes, with alderman Cornish.

Serj. *Jeff.* What say you, Mr. Rigby?

Rigby. I saw him about 7 o'clock.

Serj. *Jeff.* Was he in the crowd?

Rigby. Yes, amongst the people.

Serj. *Jeff.* Here is all now, gentlemen, but Dorman, Newman and Benjamin Alsop, and we don't go against them now. After they had done this, and hissed at the king, and cried, No king, no lord-mayor, what acclamations went these people off with?

Hammon. When the court was broke up by the sheriffs, they cried, 'God save our true 'Protestant sheriffs;' and in that manner they hollowed us.

Serj. *Jeff.* What say you?

Hammon. They hollowed us home, Sir, as far as Fishmonger's-hall.

Serj. *Jeff.* They began with a hiss, and ended with a hollow.

Mr. *Williams.* Gentlemen, I am counsel for the defendants; and, my lord, the question is, under favour, Whether these persons taken for defendants, whethey they be guilty of this riot, as it is laid in the information. We are now upon a special case, and the question is, Whether Guilty, or Not Guilty? My lord, in the first place, for the cries; what the cry was hath been too often mentioned; for those cries, there is nothing at all fixed upon any person that is defendant; all that is charged upon us, is, that we were in the hall it seems, and because there was this noise heard, therefore we must be guilty. In this crowd where we are, I hear hissing, especially at the other end of the hall; which of us are concerned in it, is a hard matter to judge; it is a hard matter, and it were very well, and it had been very happy, if some of those persons had been apprehended for their hissing. I will not say, gentlemen, that either one party or the other in the contest made the noise of hissing, but there is nothing of it fixed upon any of us. Our case is this, my lord, with favour; when we have stated our case and proved it, we are very innocent, and not guilty of the riot. In some measure it hath been stated on the other side. They say in the Information, that the lord mayor called a common hall; we do not dispute that matter, we agree it, that the lord mayor of London is the king's lieutenant; but to make such an inference, That because the lord mayor is the king's lieutenant in the city of London, that he must execute all the offices in the city, is of no credit in the world; so that they are mistaken in that. Men are bounded in their offices. The lord mayor does not execute all the offices in the city though he be lord mayor. The question between us is this; Whether the sheriffs, in this case, did more than their office as sheriffs of the city of London. There is a superiority due to the lord mayor. Another thing we agree with

them; we agree it is in the lord mayor only to call these common halls, and as Mr. Serjeant Jefferies, that hath been in a good office in the city, he agrees it himself: and it is apparent, there are some fixed days for election; but yet though there be fixed days for election, yet there must be that formality of a summons from the lord mayor to the city, to meet in order to the election of sheriffs for the city of London and other officers; that we do agree that my lord mayor hath the power of calling common halls, and he is the proper officer. We agree also, gentlemen, that when the business is done, for there is nothing in vain in nature, and there is nothing in government that should be in vain, when the business is done, my lord mayor is to bid the company, 'Fare them well,' which you may call discharging the common hall; we agree that to be commonly and usually done by my lord mayor. But herein we differ, which we are to try, the right of the office of sheriffs being the question; it is a question of right, and I do not see the government is concerned one way or other.

L. C. J. Upon my word I do see it; and surely you must be blind, or else you would see it too: when a company is got together, 'No God save the king! No king! No lord mayor!'

Mr. *Williams.* My lord, I thought I had opened it plainly, I speak before a great many people; I desire, my lord, this may be very well heard. I thought I had said very well, from all these noises and cries we are all innocent, we justify nothing of it, only we would have been glad if they had apprehended any man that made that noise; it had been a very happy thing if one of them, or all of them had been defendants to be tried. My clients are defendants, they are innocent and unconcerned; it is a crime committed by some where these gentlemen were by, but they are innocent; we hear hissing at the other end of the room, it was an ill thing, and of a treasonable complexion; but for these gentlemen they are unconcerned. The question between the lord mayor and the sheriffs of the city, is a question of right between the mayor and sheriffs, Whether it be the prerogative of the mayor, or the right of the sheriffs? And I say, under correction again, this question, Whether my lord mayor of London may adjourn the common hall to a certain day, is a question of right; Whether he can do it, or the sheriffs? and I do not see what consequence it can have upon the government. The lord mayor is the king's deputy, the sheriffs they are the king's officers; and the question is, Whether it be in the lord mayor or the sheriffs of London to adjourn it? They are very good subjects, I am sure this very year they are so; therefore I wonder at these gentlemen of the king's counsel, that will meddle with the government, and say the government is concerned in this; I appeal to any man if there be any more concern in this; I say this, here was a common hall called, grounded upon custom in the city of London, and here is a single question, Whether these sheriffs did any more than their duty; whether they were guilty of a riot in continuing this poll? Gentlemen, this is the method we shall take. First of all, it is not proved, that ever the lord mayor, before this time, did ever attempt to adjourn a common hall to any certain time; all the witnesses that were called, that pretend to be knowing in the customs of London, the common serjeant himself, he does not pretend that it was adjourned to a day.

Serj. *Jeff.* You mistake. Sir Robert Clayton did from Saturday to Monday.

L. C. J. What need if there had been no precedent? If so be an assembly of people are met about business, and they cannot make an end of it in a reasonable time, must they be kept all night till they have? What argument will you make of it? If a man may call and dissolve, do you think if there be occasion, but, by the law itself, that he may adjourn to a convenient hour?

Mr. *Williams.* That will be a question between us. My lord, what I say certainly of fact carries something in it.

L. C. J. Not at all.

Mr. *Williams.* Then, my lord, I have done.

L. C. J. Give us leave to understand something, Sir.

Sir *Fr. Winn.* My lord, by your lordship's favour——

L. C. J. I spake to Mr. Williams, and he takes it so heinously at my hand that facts signify nothing; I do again say it, the fact signifies nothing. For I tell you again as law, it is not denied the lord mayor may call, he may dissolve; then, I say, by law without fact, by custom, he that can both call and dissolve, may adjourn to a convenient time. Do not judges of assize of all the counties of England do it, when a cause appointed to be tried in such a county such a day, and it may be it is tried three days after? And yet I pray find me the statute or commission, or find me one thing or another, besides the very law itself, that doth give them leave to adjourn from time to time.

Mr. *Williams.* My lord, there is a mighty difference, but I am only upon fact; these gentlemen will agree it was never practised before sir Robert Clayton's time; what the consequence in law will be, that is in your lordship's breast; I am now speaking upon the evidence that this hath not been practised. What the law is, for that we are to have your judgment, which I humbly crave, I will be judged by gentlemen that are my seniors, and better read in this matter; but, my lord, a man may have a power of calling or dissolving, and not of adjourning; it may be so. But, my lord, admitting it to be so for this time; yet, my lord, whether we are guilty of a riot, take the circumstances of our case. Whether the right of adjourning be in the sheriffs, yea, or nay, it is a question of right, and I had rather apply my-

self to your lordship, than to the jury. If there were a question of right between the lord mayor and the sheriffs, it may be admitted by our counsel, that it was his right to adjourn the court, and probably the sheriffs might be in the wrong, and the lord mayor in the right. The lord mayor adjourns the court, and they continue it; they go on with the poll, and go on with the execution of their office, as they apprehended; if they were still for their right, I hope your lordship will not make this a riot.* My lord, for the circumstances that followed, the noise that was made, which I do not love to mention; if, I say, they were guilty of this, I am silent; but if they did no more, as I hear no more proved upon them than continuing the poll, then, I say, it will be hard to make them guilty of the riot. And another thing is this; my lord, we all know, if there were a thousand electors, any man knows, that when there is a question upon an election, it is impossible such a thing shall be carried on but there will be reviling, ill language, and the like; and to turn all these things to a riot, a thing so common from the beginning of elections to this time, if there be a division and polling, there will be something you may turn to a riot. But, I say this, they have not instanced in any one defendant, that he was guilty of any one particular act that amounted to a riot in itself, they have not instanced in one. They say of alderman Cornish, that he was of the same opinion with the sheriffs, that they did insist upon the rights of the city, he took it to be the right of the sheriffs; 'And,' says one of them, 'I will stand upon it, Bethel that had been sheriff. Now we will call our witnesses, we will prove what hath been the constant practice in the city, we will prove the methods of adjournment; and, my lord, this is to be said, which your lordship will observe, that the sheriffs adjourned the court to the very same time with my lord mayor; so that it was no more than to bring the matter to an issue in this case.

Sir *Fr. Winn.* Spare me a word in this case, my lord. There is no evidence produced against Trenchard, nor against Jekyl the younger, nor against Bifield, nor ———. Of these there is no question, but they are as if they were out of the information; I must beg leave for a word or two as to those defendants, that they have offered some evidence against. The question is now before your lordship, whether they are guilty of a riot or no? My lord, for ought I see, it will stand upon a nicety of judgment; yet, if there be not matter enough, gentlemen, to make the defendants guilty of a riot, then it will clear the defendants. My lord, as to those words, that really, were words that ought to be inquired into, who they were that spoke them in relation to his majesty; I think it was a very ill thing of those men that saw them, that they would not neglect all manner of business to seize them, I think it was a duty to fix upon them; but, my lord, there is no evidence to put it upon any of the defendants. My lord, that being pared off, now the question is, that the meeting together was lawful, that is agreed; then when they came together, my lord. I do think, that if we do rely upon the evidence, it will be a mighty hard thing to make this a riot; setting aside those villainous words that were spoken, which cannot relate to the defendants. Suppose, my lord, that among the electors the whole common hall of the city, there doth a dispute arise, before the election is over, concerning the adjournment of the sheriffs or the lord mayor; some men are of one opinion, some are of another; and their evidence, Mr. Peter King and another, attorneys, I asked the question several times, 'Did the lord mayor of London ever interpose or concern himself in adjourning the hall, till the election was quite finished?' And they said, 'No.' Then, my lord, I must say it as to these particular defendants, in such a concourse of people as were met there, it is as slender a proof of a riot as ever was, and intimates that the citizens of London, they that happen not to be the greater number, they that lose the election, may be found guilty of a riot in chusing other officers, as well as in the business of sheriffs; which being so tender a point, I think it will be a very severe exposition, my lord, to make this a riot. But now for the matter: we will call to your lordship several witnesses, men that have been magistrates in the city, that it was always looked upon, that my lord mayor, as he is the principal magistrate, he gives notice for common halls; and when the several electors are met, and the business is over, he directs them to go home, and dissolves them; but my lord mayor meddles not in every little administration of the election of officers, but leaves them to inferior officers, the sheriffs and others that is their duty; my lord, with submission they poll them, and send them home during the election, therefore by law they do this; for, my lord, the custom of a city, and the custom of a place, is the law of the place; and if the custom of the place had been, that the sheriffs have been the persons that have managed it, is their right; but their common serjeant he says he hath the sole management of it; then if it be as Mr. Common Serjeant says, if that must go, upon my word, gentlemen, your privileges are reduced to a little compass.—

L. C. J. They did confer with one another who they took to have the most voices, and so reported it; not that he did claim any thing in his own right, but as an officer of the city. Now it is plain, and I think there is no inconveniency falls upon it, if an officer acquaints

* "It is an odd kind of proceeding that men should be found guilty of a riot when they met about a lawful affair, viz. chusing their officers, and were employed only therein, and when even the matter of right is yet undecided whether the lord mayor have such an arbitrary power over the common hall as is pretended." Narcissus Luttrell's MS. Brief Historical Relation, &c.

my lord mayor, according to the best of our judgment, we think such a man hath the most voices, that does not give him a right for him to make an officer, not at all.

Sir *Fr. Winn.* I say what he said in his evidence; but one of the attorneys swears, that thay have all equal power; I wonder then who should make an end of the business. My lord, we will call to your lordship ancient citizens, that have been frequent at elections, to give you an account that the sheriffs always had the management; that my lord mayor never concerned himself, till he had notice it was determined; and if that be so, and the practice hath been so, then I don't see, under favour, my lord, how they will make this a riot; that is the case.

Mr. *Thompson.* Sir Robert Clayton, will you please to tell my lord and the jury in what manner the election of sheriffs hath been, and how the mayors have usually left it to the sheriffs in that case?

Sir *Rob. Clayton.** My lord, I have never heard this matter hath been in question till of late; so I cannot declare much on my own knowledge, how the truth of fact is or should be; I can only say this, what the practice hath been. When I came to the chair, I did endeavour to know my duty, and to do it. The first time I had occasion to take notice of this matter was in the year of my mayoralty; I did then, according to custom, summon a common-hall; when I had summoned it, there was a person presented to the hall I had drank to; the hall did refuse him, and there was a great noise and hubbub upon it, and we found a way to accommodate that matter, and left them to chuse two sheriffs for themselves. I retired into this court together with my brethren, and Mr. Recorder that was then: We sent for the sheriffs up to examine the matter; they told us, that they could not agree the thing, there were four persons in nomination, but they had granted a poll. After this we went down into the hall; of that Mr. Common Serjeant hath given some account, and Mr. Serjeant Jefferies; I shall to the best of my memory give the best account I can of it: I shall only tell you what I did understand to be my duty: I do not determine what the practice was, but what I understood to be my duty. When we came down into the common hall, to declare how the matter stood, and that a poll was agreed upon and granted, we would have adjourned the court to a longer time; but the people cried out, to go to the poll presently. I was, as you have been told by Mr. Common Serjeant, to go to the trial of one Giles, upon the assassination of Arnold, to the Old Bailey.† I did twice or thrice attempt to get down, out of the hall through the crowd, and was repulsed, the crowd was so great I could not get through, but was fain to retire back again to the hustings, as I remember, two or three times. There might be some such discourse as Mr. Common Serjeant hath said; but thus far I can remember, that I did both myself, and the common serjeant, signify to them the business I was about, and so many aldermen as made up a bench, together with Mr. Recorder, to manage that business, must go; and that I would leave the sheriffs to manage the poll, which I thought was their duty.

Mr. *Thompson.* Did you take it to be their right?

Sir *R. Clayton.* I did not apprehend it to be my right then.

Mr. *Thompson.* And therefore you left it to the sheriffs as their right?

Sir *R. Clayton.* I left it to the sheriffs to manage the same.

Mr. *Williams.* Sir Robert Clayton, I suppose when you were lord mayor, you were as much for the honour of the chair as any man, you would not have quitted the right of the chair?

Sir *R. Clayton.* I did not; there was a trial of me in that case.

Mr. *Williams.* Now, Sir, for adjourning the poll: Did you know any such question, whether a poll was to be adjourned upon the election of any sheriffs?

Sir *R. Clayton.* There hath been a great noise about adjournments of late. That poll was the most litigious of any that I know we have had before or since; that was adjourned for several days.

Mr. *Williams.* Who adjourned that poll?

Sir *R. Clayton.* The sheriffs did adjourn it. I think, gentlemen; I do think the sheriffs did adjourn it, I was not present.

Att. Gen. Sir Robert, don't serve the court thus.

Mr. *Williams.* Don't brow-beat our witnesses, gentlemen; I know, Mr. Attorney, you are an example of fair practice: We are examining our witnesses.

Sir *R. Clayton.* Pray, my lord, let me explain myself; I shall let Mr. Attorney General understand me. I did never appear at Guild-hall, unless upon the account of a court of aldermen; I did never appear at Guild-hall, but the first day we had consultations here in this court about the adjournment, and upon the hustings about going about the business we intended, and the hall was very intent upon the poll; I twice attempted to go out, and could not get out; whereupon we were fain to acquaint the hall, as well as we could for the noise, of the business we were to go about, and they let me go. I left behind the sheriffs and the common serjeant; how long they staid, I cannot tell; I can upon my own knowledge give no account of them. I was not consulted, to the best of my knowledge, afterwards, nor did give any particular directions for adjournment. I did not do it for this reason; I did

* He had been member in parliament for the city of London, and in the last parliament of Charles the 2nd, moved for the bill to exclude all popish successors, and in particular James, duke of York, See 4 Cobb. Parl. Hist. 1317.

† See vol. 7, p. 1130 of this Collection.

not look upon it to be in my power: If I had such a power, I did not understand it.

Mr. *Williams.* Sir Robert, how many days do you think that poll continued?

Sir *R. Clayton.* About six days.

Mr. *Williams.* Of those six, how many days were you present?

Sir *R. Clayton.* I did not understand it to be my duty, and so did not look after it.

Mr. *Thompson.* Sir R. Clayton, I desire to ask you a question, as to this matter you have given in evidence: Do you give it to the best of your remembrance, or positively?

Sir *R. Clayton.* I tell you, I speak to the best of my remembrance every thing that I say.

Att. Gen. Sir R. Clayton, I beg your favour, to the best of your remembrance is no evidence, it is so lately; if you please, sir Robert, you are to give evidence of a thing about three years ago. I ask you, upon your oath, who were your sheriffs?

Sir *R. Clayton,* Sir Jonathan Raymond, and sir Simon Lewis.

Att. Gen. I would ask you then a plain question, sir Robert, because you come in with your remembrance: Did you give express direction to the common serjeant or the sheriffs to adjourn, upon your oath?

Sir *R. Clayton.* I must, Mr. Attorney General, by your favour, take in my remembrance.

Att. Gen. Then you are no evidence. Sir Robert, did you give directions or not, upon your oath?

Sir *R. Clayton.* I can't say it was given.

Att. Gen. Did you, or did you not?

Sir *R. Clayton.* My lord, I hope I have spoke English in the case: We did discourse of the adjournment in this court, I believe it was discoursed below; but, as I said, I was engaged to go to the Old Bailey, and I would leave that matter to the sheriffs, whose proper business I understood it to be.

Att. Gen. I asked you, sir Robert, one of the plainest questions that ever was asked; I ask you, whether you gave the sheriffs or the common serjeant express order to adjourn.

Sir *R. Clayton.* I believe I did not.

Att. Gen. Did the sheriffs tell you they had a right then.

Sir *R. Clayton.* There was no dispute who had the right.

Serj. *Jeff.* Sir Robert, if you please, I would ask you a question or two. Do you remember that the court was adjourned while you were there or not? Do you understand the question, Sir Robert? Do you remember the common hall was adjourned while you were there?

Sir *R. Clayton.* Yes, Sir, if you give me leave to explain myself, I think the common hall was adjourned; it was declared; but there was such a noise in the hall, that the people could not hear it.

Serj. *Jeff.* But there was a sort of declaration made by yourself, you did make an adjournment; but the noise was such, that the people did not hear: And if you remember, there was a person affronted one of the sheriffs, and I committed him to custody upon it.

Sir *R. Clayton.* We desired to adjourn for an hour or two, that we might go and refresh ourselves.

Serj. *Jeff.* Then you remember there was an adjournment. I ask you whether it was appointed to be made by you or the sheriffs?

Sir *R. Clayton.* Truly I believe it was appointed by me.

Serj. *Jeff.* Sir Robert, by asking a question or two, sir Robert, I know I shall bring some things to your remembrance.

Sir *R. Clayton.* My lord, I don't know I have given any great occasion of laughter to my brethren; these adjournments have been very common with us, and I might agree to it, or order it, or direct it: but one of them I believe I did, or two of them.

Serj. *Jeff.* Sir Robert, I would only have a question or two asked, and I know by asking a question or two, I shall bring things to your memory, which I am sure you cannot easily forget. Were there directions given for proclamation to be made for all parties to depart in the king's name?

Sir *R. Clayton.* I believe there might.

Serj. *Jeff.* The next question is, whether the sheriffs ordered that proclamation to be made for all parties to depart?

Sir *R. Clayton.* If it were done while I was present, I make no doubt in the case but I did direct it, I make no question of that.

Serj. *Jeff.* Very well. Now sir Robert Clayton, we are got to an adjournment to a time by your direction, and proclamation by your direction. Now I will ask another question, upon your oath: Was not you in the common hall, and gave order for an adjournment till Monday following; for I remember that day to be Saturday.

Sir *R. Clayton.* Truly I don't remember that.

Serj. *Jeff.* You do not! Sir Robert, you know very well that the sheriffs of London, when the lord mayor and aldermen come back to the hustings, the sheriffs sit remote, one on the right hand, and the other on the left, furthest from the lord mayor; so that all the aldermen sit nearer to the lord mayor than the sheriffs do: Did you mind that the sheriffs came to you to speak to you any thing of an adjournment?

Sir *R. Clayton.* I never saw it.

Mr. *Jones.* I would ask you a question or two: You know this gentleman, don't you? [Pointing to the common serjeant.]

Sir *R. Clayton.* Yes.

Mr. *Jones.* Did he attend the court at that time?—Sir *R. Clayton.* Yes.

Mr. *Jones.* Sir Robert, I ask you a fair question, did you lay any command on him to adjourn the hall at that time, from Saturday till Monday.

Sir *R. Clayton.* Pray, my lord, give me leave to answer Mr. Jones in my own way.

Mr. *Jones.* My lord, I am in your judgment,

it is a fair question within his own recognizance lately done, he ought to answer positively, Yes or No.

Sir *R. Clayton.* Am not I upon my oath; can you tell me what I can say?

Mr. *Jones.* Ay or no. Any honest man would do it:

Sir *Fr. Winn.* All witnesses answer their own way, don't they?

Mr. *Jones.* Let him answer then his own way.

Att. Gen. My lord, you know there is a rule in chancery, if it be a matter within seven years, if it be not answered positively, it is no answer; If one asks a witness a question that lies within a little while, if he will not answer either affirmatively, or negatively, he is no witness.

L. C. J. I can't tell, Mr. Attorney.

Mr. *Jones.* Will you answer or no, sir Robert, whether you commanded the common serjeant to go and adjourn the hall or no?

Sir *R. Clayton.* I don't remember that I did.

Mr. *Jones.* Then I only ask you this further question, whether Mr. Common Serjeant did not tell you, that it was not his proper business to do it, and that unless you would lay express commands upon him, and put the very words in his mouth, he did desire to be excused, and did he not stand there? [Pointing to the bar.]

Sir *R. Clayton.* I have heard, Sir, what Mr. Common Serjeant did say, and I cannot charge my memory with it; but I have that charity for Mr. Common Serjeant, to believe there might be discourse to that purpose.

Sir *Fr. Winn.* Mr. Love, in all your experience, what do you remember?

Mr. *Williams.* How long have you known Guildhall and elections?

Mr. *Love.* I suppose, my lord, these gentlemen do not expect I should say any thing that was done that day; but, my lord, all that I suppose you expect from me is, what I did observe to be the practice of the city; to the best of my remembrance, I shall give you an account. My lord, about 23 years ago, I did observe the practice to be this; when I was called into this office of sheriff, I took it as a thing for granted, that it was the sheriff's office to manage the common hall, that I did, as my lord mayor's was to have a sword borne before him; I have received it by tradition from all before me, and my own experience. My lord, I remember when we came to chuse sheriffs upon Midsummer day, after the lord mayor and aldermen had been there, my lord mayor said to me and my brother sheriff, Gentlemen, look to your office. We accordingly went to it, and chose two sheriffs, one gentleman that had been drank to by my lord mayor, I think it was Alderman ——; but notwithstanding that drinking to him, we took no notice of that as a ceremony, he was put in nomination among others, and being a senior sitting alderman, we returned him; otherwise, my lord, I assure you I would not have returned him, notwithstanding the drinking. After once that the lord mayor and aldermen withdrew to go to the council-chamber, they said to us, now gentlemen, look to your office.

Thompson. What was your office?

Love. To chuse sheriffs.

Mr. *Thompson.* Did my lord mayor meddle with the election, or left it to the sheriffs?

Love. Left it to the sheriffs.

Mr. *Williams.* What was your opinion, Sir, was it in the lord mayor to take the poll, or the sheriffs?

Love. Truly, Sir, I am not a competent judge of whose right it was; but if my lord mayor had gone about to meddle in it, I should have prayed my lord mayor to meddle in his own office, and let me alone with mine.

Att. Gen. Yes, Mr. Love, you were then the tribunes of the people.

Sir *Fr. Winn.* Here are some say the common serjeant and the common cryer have a power, nay, the whole power of ordering the hall during the election. What is the office of the common serjeant there?

Love. Truly, Sir, I look upon the common serjeant and the common cryer as persons left to assist us, because they could not put us to the trouble of crying O yes ourselves; and if any common serjeant or common cryer had durst to put a question without my direction, I would have known whether he could or no.

Sir *Fr. Winn.* Mr. Love, was it ever discoursed to you when you was sheriff, or before, or since, that ever my lord mayor did interpose before the election was over?

Love. Since I was discharged of being a magistrate, I never was at a common hall since. I have spent my money for the city's service, but never got a penny by them; I never heard, that ever the lord mayor, till these late times, interposed, but that the sheriffs managed the whole business of chusing sheriffs.

Att. Gen. Mr. Love, I desire to have a word with you; you speak of the time of your reign; I would ask you a plain question, Was it before the king came in?

Love. It was that year the king came in.

Att. Gen. Was you chosen before?

Love. Yes, I was.

Att. Gen. Do you remember an act of parliament in 1648, then in force, of shutting out my lord mayor?

Serj. *Jefferies.* I would ask him a question or two. Hark you, Mr. Love, Let me ask you a question or two.

Love. Sir George, I would give Mr. Attorney an answer.

L. C. J. What would you make of it? If you ask him of an act of parliament, it is something.

Att. Gen. You speak of a time when my lord mayor had no more to do with it than I had. There was an ordinance of parliament, did you never see that?

Love. To the best of my remembrance I never saw it in my life.

Att. Gen. Nor heard of such a thing?

Serj. *Jefferies.* Hark you, Mr. Love, I perceive you would have disputed with my lord

mayor; who was the lord mayor that you talk of?—*Love.* Sir Thomas Allen.

Serj. *Jeff.* Now I would desire to know whether you remember the city before the king came in?—*Love.* For a little while.

Serj. *Jeff.* Do you remember any thing of that custom of the lord mayor's drinking to sheriffs; was not that used before the king came in?—*Love.* A long time.

Serj. *Jeff.* It is well enough; a long time.

Mr. *Williams.* My lord, we have seven or eight more to the same purpose, but we are satisfied with these gentlemen: We will prove, if there was any thing like a riot, we will prove my lord mayor, and those that were with him, were the authors of it.

L. C. J. When multitudes of people are gathered together upon a lawful occasion, supposing that they had a right to be there, I do say, that in that case it would be much a mitigation of the fine, so for this same riot; but on the other side you must know, that these men that do it, it doth not excuse them, for *ignorantia juris* is not an excuse. It is true, if they had had a lawful occasion to continue to do it, but in truth they had not, that will excuse them *à tanto*, but *non à toto.*

Mr. *Holt.* My lord, I beg to put in this case; there is a great deal of difference where a person does claim a right to himself, and does an extravagant action. Now, my lord, these persons did claim a right to themselves to continue the common hall, and that it was not in my lord mayor's power to adjourn it without them: Now, my lord, they claimed this right, if they used no violence, that is excusable. If I should claim a right to another man's estate, though I have no title, and say I have a right, and give it out in speeches, no action lies against me; but if I do an extravagant action, and say another man hath a title, there lies an action against me.

L. C. J. Now go to your fact.

Sir *Fr. Winn.* My lord, put a point to us, and we need not call more witnesses.

L. C. J. I don't speak to hinder you from calling your witnesses.

Sir *Fr. Winn.* I put this case, we undertake to prove, that it was always looked upon, that it was the right of the sheriffs: suppose, my lord, upon the dispute it should be found, that the opinion of the jury should be otherwise; will this turn to an illegal act?

L. C. J. Call your witnesses.

Mr. *Wallop.* I beseech your lordship I may put one case in this point; in a point of right, if they have a probable cause to insist upon it. Suppose I send forty men to a wood, and take a car or a team, if they be a competent number to cut down wood, if we are mistaken in the title, that is no riot. Lambert puts the case.

L. C. J. But what if I had sent a great many men to cut down the whole wood?

Mr. *Williams.* We will call some witnesses that will take us off from the riot thus, if so be we can excuse ourselves of the disorder, and put it upon my lord mayor, then we are innocent.

L. C. J. Very well, if you do that.

Mr. ———. Mr. Sibley, are you acquainted with the manner of the election of sheriffs? How long have you known it?

Sibley. I have been of the livery ever since 1639; in all my time, I speak, gentlemen, to the best of my remembrance, it hath been the custom in all my time, except here of late, that the sheriffs of London have had the management of the election.

Mr. ———. Did my lord mayor ever interpose till the election was over?

Sibley. I never knew my lord mayor interpose till lately.

Sir *Fr. Winn.* Did you ever hear my lord mayor pretend to it till of late?

Sibley. No, my lord.

Sir *Fr. Winn.* Did the mayor use to be present at any election during the election?

Sibley. I have been most commonly there.

Sir *Fr. Winn.* But the mayor; would the mayor be there?

Sibley. The mayor and aldermen went off the bench.

Sir *Fr. Winn.* Who managed the elections?

Sibley. The sheriffs.

Sir *Fr. Winn* Were the common serjeant and the common cryer there?

Sibley. The common serjeant and the common cryer are always there.

L. C. J. I pray thus; you have known the city, it seems, a great while. I would ask you this: pray who did call the assembly that was to chuse the sheriffs, did the sheriffs, or the lord mayor?

Sibley. We commonly received the tickets by the officers of the companies.

L. C. J. Did the officers of the companies summon the assembly? Hark you, pray, Sir, recollect yourself; do you take it, that the officers, the beadles it may be, of the several companies, did they summon the livery-men, and so a common hall was called together; was it so in your time?

Sibley. It hath been commonly so; we have received tickets from the beadle of the company.

L. C. J. And my lord mayor had nothing to do with it then?

Sibley. What order the masters and wardens had from my lord mayor, I never inquired into that.

L. C. J. When the hall was dissolved, who ordered proclamation to be made, the sheriffs or the lord mayor?

Sibley. My lord mayor hath not used to be there.

Mr. *Thompson.* When they had done, they went away. He won't trouble your lordship.

L. C. J. Pray, had my lord any hand in summoning; did he direct the summoning of them?—*Sibley.* It is more than I know.

L. C. J. You bring a witness that knows nothing of the matter.

Serj. *Jefferies.* Mr. Deputy Sibley. Give me leave to ask Mr. Sibley a question or two: I shall set him to-rights presently. Mr. Sibley,

if I be not mistaken, you are one of the company of tallow-chandlers, and you have been master of the company, and you have been warden of the company. You very well know what directions are given to the beadle are generally by the master or wardens: pray, upon your oath, when you were master or warden, was there ever any precept sent to you to summon a common hall?

Sibley. Indeed I don't remember that, Sir.

Mr. *Thompson.* If your lordship please, we have done with our evidence; I would beg your lordship's opinion in it.

Sir *Fr. Winn.* We do admit my lord mayor summons the court.

L. C. J. But you bring a witness that knows nothing in the world of it, but yet you would have it taken for gospel, that the sheriffs had all the management before that time forty years together, till now very lately. But when he comes to be asked, how is this assembly or common hall called together, alas! he knows no more of that than one in Utopia.

Mr. *Thompson.* My lord, we have several other witnesses, but we will call no more.

Att. Gen. If you have no more, we will call two or three more.

Mr. *Thompson.* We have some to prove, that my lord Grey came to speak with sir William Gulston, and went away again; and we desire to call sir Thomas Armstrong.

Sir *Fr. Winn.* My lord, if your lordship pleases, thus, there will be it seems some particular defences made. Your lordship hath heard their evidence, and what we have said; we desire to call two or three witnesses to another head. Your lordship hath heard there was some rudeness by some of the people, but who they were it doth not appear. We will call two or three witnesses of the behaviour of those men and company that came with my lord mayor; that whatsoever disturbance was made, they were the chief men that made the disturbance, and my lord mayor could not help it, nor we neither.

L. C. J. Sir Francis, I believe those men that would not have God save the king, my lord mayor could not hinder them; but will you undertake to prove, that those that came with my lord mayor, that they were the men?

Sir *Fr. Winn.* They were with them, my lord.

Serj. *Jeff.* They were with them that cried 'God bless the Protestant sheriffs.'

Sibley. My lord, I desire to explain mysel to what I said; it is several years ago since I was master of the company; I do not remember, but I believe the summons was directed from my lord mayor.

Mr. *Freak.* Mr. Winstanley, what account can you give to my lord and the jury?

Winstanley. I have lived near the hall, an I often came in, but I was not a liveryma upon that poll that was between Mr. Kiffen an sir Robert Clayton; the sheriffs managed it.

Mr. *Freak.* Who managed it?

Winst. The sheriffs.

Mr. *Freak.* Who declared?

Winst. The sheriffs.

Mr. *Freak.* Did the mayor come down to declare the election?

Winst. The mayor came down after the poll, but the sheriffs took the poll.

Mr. *Freak.* Who was then mayor?

Winst. Sir James Edwards was sheriff, and ir John Smith.

Mr. *Freak.* Who was mayor?

Serj. *Jeff.* It was sir Samuel Starling.

Mr. *Freak.* Who put the question upon the iustings?—*Winst.* I can't tell.

Mr. *Freak.* What did you hear the sheriffs say, or see them do?

Winst. The sheriffs presently granted a poll, and parted one to one door, and the other to the other.

Mr. *Freak.* And who took the poll?

Winst. The sheriffs took it.

Mr. *Freak.* Who declared the election?

Winst. The sheriffs.

Mr. *Freak.* Who were sheriffs then?

Winst. Sir James Edwards, and sir John Smith.

Serj. *Jeff.* I would ask you this question: do you take it upon your oath, that the sheriffs declared the election?

Winst. I declare upon my oath, that the sheriffs took the poll.

Serj. *Jeff.* You may guess pretty well what I mean by this. First of all, I ask you, did the sheriffs put the question?

Winst. The sheriffs took the poll, Sir.

Serj. *Jeff.* Nay, answer my question: did the sheriffs put the question, or did any body else?

Winst. Truly, Sir, I have forgot; you were there.

Serj. *Jeff.* I know I was, Sir: I know very well: I ask you upon your oath, who was it that declared the election afterwards, upon your oath?

Winst. Truly, sir George, I do not remember

Serj. *Jeff.* Mr. Winstanley, one went out at one door, you say; and the other went out at the other, you say; now I say; who took notice, and told the names of those that went out at one door and the other?

Winst. The two sheriffs.

Serj. *Jeff.* Who else?—*Winst.* I cannot tell.

Serj. *Jeff.* Do you remember me there at the great door, when they polled and went out? Do you remember who told them?

Winst. No, truly.

Serj. *Jeff.* Pray, do you remember when one Mr. Broome, a wax-chandler, was chosen Ale-conner?

Winst. I was in the hall; but I do not charge my memory with it.

Sol. Gen Who is it grants the poll when it is demanded?

Winst. I do remember very well, sir George Jefferies was in the hall; they demanded a poll, and so went out.

Sol. Gen. Who granted it?

Winst. The two sheriffs.

Serj. *Jeff.* I will put you a case nearer home, Mr. Winstanley: You remember when sir Thomas Player was chosen chamberlain, when the question was put who should be chamberlain, between him and a gentleman I see not far from me; Who, do you remember, managed the poll then?

Winst. There was no need, sir George.

L. C. J. What do you mean to do with these litte witnesses? You call witnesses that know nothing of the matter, or nothing to the purpose.

Serj. *Jeff.* My lord, let me ask him but one question more: I know he hath been a very great evidence in this case; I remember when that gentleman was in for bridge-master? Who was the poll demanded of at that time?

Winst. Truly, Sir, I think it was demanded of the court.

Serj. *Jeff.* Of the court?

Winst. Usually upon other days, my lord mayor, and the court come down: But upon Midsummer day they go up.

Serj. *Jeff.* But I ask you, of whom the poll was demanded at that time.

Winst. I don't remember it, I will assure you.

L. C. J. You told us that point would be granted, and you would not stand upon it.

Mr. *Williams.* My lord, where there are so many men, there may be many minds: I would have your lordship and the jury hear them.

Mr. *Jones.* The government is concerned, Mr. Williams.

Serj *Jeff.* This is not a matter of mirth I will assure you; it reaches the government.

Mr. *Williams.* My lord mayor hath the power of adjourning the hall, but not till the business is done.

Mr. *Thompson.* My lord, I would put you a case [Here Mr. Jones offered to interrupt him.] Sure Mr. Jones, I ought to be heard. If my lord mayor hath power to call a common hall, he hath not to adjourn it before the business is done.

L. C. J. If a writ comes to the sheriffs to chuse parliament-men, then the sheriffs have it; but this is my lord mayor's office, he hath power to dissolve and adjourn.

Mr. *Thompson.* I speak to this case, my lord; I will shew your lordship an instance where it cannot be done. My lord mayor hath power to call here, and he hath power to dissolve, say they: My lord it cannot be, with submission, in all cases. He hath power to call an assembly when there is a mayor to be chosen; and the citizens have a privilege to move their mayor or continue him: Now if it were in the power of the mayor, and there should happen a question, who they were? For, to a great number of electors, if it were in his power to adjourn from time to time, he must continue mayor.

L. C. J. It is plain he may do it for all your objection. You know it was agreed by all sides that sir Samuel Starling, the lord mayor, had well dissolved the assembly, that is, in point of law, and they could not say the assembly was in being; yet afterwards there was an action brought against him; and there they laid, how that maliciously, and to the intent that he who was chosen into the place of Bridge-master, to which he was duly elected, should be set aside, he goes and dissolves the assembly, and denied to grant him a poll, which they ought to have had; yet for all that the assembly was well dissolved.

Serj *Jeff* Conclude, gentlemen, conclude.

Mr. *Thompson.* That which I have to say is a point of law.

Serj. *Jeff.* Sir Fr. Winnington, if you design to conclude, I tell you beforehand. I would not interrupt you; we will call a witness or two.

Sir *Fr Winn.* My lord, because we would make an end, I will call two of those men that came with my lord mayor, to shew that if there was any rudeness, the very people that came with my lord mayor, were the cause of it.

Sol Gen. That they that came with my lord mayor caused them to stay after my lord was gone?

Mr. *Thompson.* Mr. Jackson, pray can you remember, whether any of the defendants here were concerned in any affront to my lord mayor, or who it was that my lord mayor received an affront from.

Jackson. I did observe, my lord, as he went out of the hall, I took my back and set it against the crowd, and had my face towards my lord mayor; and I was crowded so, that I could scarce see myself one way or other, but got off the steps at last, and went home with my lord mayor.

Mr. *Thompson.* Can you say who struck off the hat?

Sol. Gen. Where do you live, pray?

Jackson. I live at Charing-cross.

Sol. Gen. With whom?

Jackson. With myself, Sir.

Sir. *Fr. Winn.* What is your name?

Serj. *Jeff.* Don't you know the sword-bearer of Bristol, sir Francis?

Mr. *Thompson.* Mr. Roe, were you here when my lord mayor was crowded? Who offered any affront?

Mr. *Williams.* Pray will you give my lord and the jury an account of what you heard. and where the disorder began?

Roe. My lord, I was in Cheapside, and I heard a great noise of huzzaing, and a terrible noise indeed; and I met with a fellow running, my lord, and I stopt the fellow: What is the matter. Nothing, said he, but an old fellow riding skimmington and skeleton; and in the street I saw a matter of a hundred with their hats upon sticks, crying, damn the Whigs; said I, 'Gentlemen, what's the matter?' said they, 'The work is done to stop the poll;' and that is all.

L. C. J. Hark you, were you in Guildhall?

Roe. I followed them a little way down the street.

L. C. J. Hark you, did you see my lord mayor's hat down upon the ground; and was he like to be thrown down; did you see that?

Roe. No, I saw nothing of that; I heard such a noise, I was glad I got rid of them.

Mr. *Williams.* My lord, we have no more to say in the general; all that I have to say now is for my lord Grey. The evidence against my lord Grey, was, that he was here: Now, my lord, we have witnesses more particularly to defend my lord Grey.

Att. Gen. We shall call a witness or two to clear what that gentleman said when sir Robert Clayton was mayor.

Serj. *Jeff.* Pray, gentlemen, let us have a little patience. Pray, my lord, if your lordship please—Here is such a horrid noise—Upon all the matter, I don't perceive, but sir Robert Clayton does himself believe proclamation was made by him; he does believe the adjournment was made by him; but as to the adjournment to Monday, he is not certain of that. But if your lordship pleases, we have here both the sheriffs, sir Jonathan Raymond, and sir Simon Lewis, that will shew the court whether there was any such thing.

Att. Gen. Before Bethel came out of the North, no sheriff ever pretended to it.

Serj. *Jeff.* Pray, sir Simon Lewis. I desire you would satisfy my lord and the jury concerning the adjournment when you went to the sessions house in the Old Bailey: Did you order the adjournment of the poll, or my lord mayor?

Sir *Simon Lewis.* We came and waited upon my lord mayor here, and told him they demanded a poll without; we took his directions and my lord mayor did adjourn the court, by reason that the assassinators of Arnold were to be tried; and by reason of that it was adjourned till Monday, and my lord mayor and the aldermen went thither; but indeed we were left as prisoners, and I received a blow on my breast.

Att. Gen Sir Jonathan Raymond, did you pretend to have the power then of adjourning the court?

Sir *Jon. Raymond.* My lord did adjourn the court because of that trial, and then afterwards we went upon the poll; we were several days upon it: We only appointed from day to day till we had made an end; and when we had made an end, we declared it to my lord mayor and the court of aldermen; and my lord mayor and the court of aldermen came upon the hustings, and declared who it fell upon

Att. Gen. Sir James Smith, when you were sheriff, did you pretend to have any such power?

Serj. *Jeff.* Upon your oath, did you pretend to have a power of adjourning common halls?

Sir *J. Smith.* No, Sir; we were sheriffs immediately after sir Robert Clayton; I never heard it questioned but my lord mayor had the right of it.

Sir *Fr. Winn.* Sir Jonathan Raymond, I think you say the sheriffs did adjourn from day to day at that time?

Sir *J. Raymond.* We could not make an end of polling; and we did appoint from day to day till we had made an end of polling.

Com. Serj. My lord, I will give your lordship an account of this whole day's proceedings: We came to the hall, and after Mr. Recorder, sir George Jefferies, had attempted to speak to the hall, (for they were in such a tumult they would not suffer him to speak) my lord mayor withdrew: there was a very great clamour and noise; but at last the question was put; and I came up with the sheriffs hither, and acquainted my lord, that Mr. Bethel and alderman Cornish had the most hands, and that there was a poll demanded between Mr. Box and Mr. Nicholson, and Mr. Bethel and Mr. Cornish; then the dispute lay as between Box and Nicholson, and alderman Cornish and Mr. Bethel: I acquainted my lord mayor that was, sir Robert Clayton, that Mr. Recorder said he would not go down to make declaration, they would not hear him: upon that sir Robert Clayton took a paper and gave it to me, with these very words: [It is the greatest tumult I was ever in all my life, and I have some reason to remember it.] Pry'thee, says he, do you make declaration to them; for if they will hear any body, they will hear thee: Sir, says I, because it is not the duty of my office, I desire your particular direction: then, says he, tell them I must adjourn it till Monday, because I must go to the Old Bailey, to try the assassinates of Arnold: whereupon the hall was adjourned, and in a great tumult, and my lord mayor attempting to go out, he was beat back twice or three times; he spake something to them, and they went away, leaving me and the sheriffs upon the hustings, and there they kept us prisoners till six or seven o'clock at night. On Monday, when we came to poll again by his direction, I went to his house, and he gave me direction to go with the sheriffs to adjourn it: afterwards there was a court of aldermen purposely called, and, upon their direction, I took the poll and kept it, and every adjournment was made by his particular direction to me.

Sir *Robert Clayton.* Gentlemen, I do desire I may explain myself, because I was imperfectly heard: some part of the story that Mr. Common Serjeant does say, I do remember, and will tell you what I do remember of it. I remember the coming up, and I remember, that Mr. Recorder was not willing to go down, there was such a hubbub; I remember that very well. The particular words I said to him, I cannot charge my memory with; we had discoursed. I remember the adjournment, and we discoursed of the adjournment below; we made proclamation, but the noise was so great they could not hear; and upon my attempting to go out, I was beaten back twice or thrice, and then we were fain to let them know the business we went about as well as we could, and then they let me go, and I left the

sheriffs with them to agree of the manner and methods of polling. There were several adjournments made afterwards; I cannot charge myself with it: I might be particularly consulted; but for the particular times of adjournment, I did not think myself concerned in point of reputation; if I thought I had been blameable, I should have concerned myself to have given more particular directions.

Mr. *Thompson*. If your lordship please, I have but this; admitting the right to be in the lord mayor——

L. C. J. Do you make a doubt of it now?

Mr. *Thompson*. Admitting it, those gentlemen that came to continue the poll, it is a question whether they can be guilty of the riot or not.

Mr. *W*——. There are some three or four of the defendants that have a particular case; that stands by themselves; and it rests upon this point, Whether my lord mayor hath this power or not? For so much of the evidence as concerns any noise or hissing, or any thing of that, that relates to the time of adjournment; for it was done at the time of the adjournment. As for Mr. Cornish, Mr. Goodenough, my lord Grey, and one or two more, they did not come till within some three hours after that, so that they cannot be engaged in the noise, or that.

L. C. J. It is no matter, they came time enough.

Mr. *Williams*. We have done, my lord, with the general evidence; we have something to say in defence of my lord Grey; all the evidence against my lord Grey is this, that he was here about seven o'clock at night. For that, gentlemen, we say this; that my lord Grey had some business here, and my lord's business was this; my lord Grey was here about the sale of a manor in Essex with sir William Gulston; my lord, they had appointed this very day for that business, it was my lord's interest mightily to pursue it, and sir William happened to be at sir Thomas Player's, and knowing this to be an election-day, my lord dined that day at an eating-house in the Haymarket, and afterwards came to Peter's coffee-house, in Covent-garden, and staid there till between four and five o'clock in the afternoon, when he thought the heat would be over; and then he came to make inquiry after sir William, and took up in Bruen's coffee-house about five or six o'clock; there he continued quiet in the house till all the noise was over; then he sent to inquire for sir Wm. Gulston, and hearing he was at sir Thomas Player's, he and sir William went to a tavern, and there they treated, and finished the affair. My lord, we will prove it; call Mr. Ireton.

Ireton. My lord, I know that at this very time my lord Grey was treating with sir Wm. Gulston about the manor of Corsfield, in Essex, and my lord Grey and sir Wm. Gulston had appointed to meet that night at the other end of the town, if the poll were ended. In the evening I met my lord Grey, who told me he had been with sir Wm. Gulston in London, and had dispatched the business.

L. C. J. Did my lord tell you so?

Lord *Grey*. He treated for me, my lord, with him.

L. C. J. Pray, for God's-sake, you must lay your matter a little closer together; if he was to treat about the purchase of a manor, was there no convenient place for company to treat about it, but while they were casting up the poll-books with the sheriffs and Goodenough? Was that place fit?

Mr. *Holt*. My lord had appointed to speak with sir Wm. Gulston that day in Covent-garden, if the poll had been over; but not finding him there, came into the city.

Lord *Grey*. That gentleman went between sir Wm. Gulston and I.

L. C. J. Where were you to meet?

Lord *Grey*. At the Rose tavern, in Covent-garden.

L. C. J. What made you here then?

Lord *Grey*. Not finding him there, I came hither, and spake with sir Wm. Gulston in that very room. The poll was over, and the company gone.

Mr. *Williams*. Mr. Ireton, Do you know there was any treaty between my lord Grey and sir Wm. Gulston about the sale of any land?—*Ireton*. Yes, Sir, I do.

Mr. *Williams*. When was that treaty?

Ireton. About a twelve-month since.

Mr. *Williams*. Do you know they had any discourse about it?

Ireton. Sir, they had; I think it was Midsummer-day, the day the election of sheriffs was.

Mr. *Williams*. Were they about that treaty that day?—*Ireton*. That day, my lord.

Mr. *Williams*. Where was the treaty?

Ireton. In sir Thomas Player's house.

Mr. *Williams*. What time of the day?

Ireton. About 12 o'clock.

Mr. *Williams*. Where went my lord afterwards?

Ireton. My lord went to dinner, as he told me, in the Hay-Market.

Mr. *Williams*. Did you know of any appointment to meet again?

Ireton. I was informed so, but cannot positively tell.

Mr. *Williams*. Sir Thomas Armstrong, Pray, Sir, will you give an account where my lord was that day?

Sir *T. Armstrong*. I came up this way about 6 o'clock, and was in a coffee-house by Guildhall.

Mr. *Williams*. Do you know any thing about that treaty.

Sir *T. Armstrong*. I saw them together that night. I saw them together at sir T. Player's about 12 o'clock, and again at 8.

Mr. *Williams*. Do you know any thing of treating about this land in Essex?

Sir *T. Armstrong*. No, I do not.

Att. Gen. You did not see them in the chamber?

Sir *T. Armstrong*. Does any body say I did?

Lord *Grey*. My lord, I will give you an account of it.

Mr. *Williams*. My lord, Mr. Ireton tells you this; my lord Grey and sir William Gulston were in treaty about buying these lands that very morning together; says sir Thomas Armstrong, about noon; afterwards my lord went to the Hay-Market, and staid there till evening, and my lord and sir William were together again at night. My lord, this case will depend upon your lordship's directions. It is very plain, that my lord-mayor of London hath the summoning the common-hall, and when the business is done he hath the discharging them. My lord, if it be true what Mr. Love and others say, they tell you, that in all their time, their opinion is so, that it belongeth to the sheriffs, and not to the lord mayor; what may be the consequence, lies in your lordship's opinion. Now for the consequence if it were no more than a matter of opinion and right, and the sheriffs insist upon it: Are these defendants and the sheriffs guilty of these outrages For there is nothing proved upon them. This don't make them guilty of any thing more than a bare continuing the poll. Therefore, my lord, I must submit to your direction, how far the jury will find us, or any of us, guilty of a riot in this case.

Sir *Fr. Winn*. My lord, we agree they did continue the poll, and the defendants did apprehend it was lawful for them so to do; if the jury should think they did misapprehend what was the ancient usage of the city; if your lordship should be of opinion, that by the law the lord mayor ought to do it; yet I do say, it being so probable a case, their insisting upon it will not make it a riot: Your lordship will be pleased, I hope, to take notice of it, if they find the mayor hath power to adjourn it?

Mr. *Wallop*. I humbly conceive, that the information does, in truth, destroy itself, for it is agreed on all hands, as the information sets forth, that they came together upon very lawful occasions; and the information sets forth, that by colour of their office they did as if they were lawfully assembled. Now, my lord, they have overthrown the definition of a riot, for a riot is, when three or more are come together to do an unlawful act, and they do it. So that it is a very hard matter to make this a riot.

L. C. J. Does not this matter appear upon record?

Mr. *Holt*. No, no, my lord, it don't.

Mr. *Wallop*. If men do lawfully meet together, if by chance they fall together by the ears, and commit many misdemeanors, this can never be a riot. But, say they, here was an adjournment, a command by my lord-mayor to adjourn the court, and they continue after adjournment: Now, my lord, the question is, Whether he had power to adjourn it or no, the citizens did insist upon it, that he had no power. Now, gentlemen of the jury, if you find in your conscience, that the citizens had a probable cause, and they insist upon it, this can never be a riot.

Mr. *Holt*. It doth appear that they were lawfully assembled together. And for the throwing off my lord-mayor's hat, suppose that my lord-mayor hath a power for to adjourn the court, yet, my lord, it must be agreed, that those that come thither must have a convenient time to depart; for my lord-mayor, as soon as ever he had adjourned the court, he went away, and all the hall could not go of a sudden, but must have a convenient time to go; some followed him immediately, and the other gentlemen that staid behind, not at all consenting to that rude action about my lord-mayor, cannot be guilty, for there is no proof of any miscarriage committed by any of these defendants; it may be there was some discourse concerning the power of my lord-mayor. I only mind your lordship of sir Robert Atkins's case, a late case in the King's-bench; there can be no assembly to choose an alderman, as in that case, unless the mayor was there; the assembly was held, and yet, gentlemen, because it was not done in a tumultuous manner, but with a good intent, it was held, that sir Robert Atkins was not guilty of a riot. There must be an evil intention to do some mischief.

Mr. ——. Turner brought his action against sir Samuel Starling for disolving the hall: And, my lord, that being the case of the election of a bridge-master, surely there is a parallel reason for the sheriffs.

L. C. J. That case is against them.

Mr. ——. No, my lord.

L. C. J. There the lord-mayor hath a power by law to dissolve the assembly, though in truth he should not have done it.

Sol. Gen. The action was brought for denying a poll, my lord.

Mr. *Thompson*. It is laid in that declaration, that it is the custom of the city, that my lord-mayor cannot dissolve.

Att. Gen. May it please your lordship, and you gentlemen of the jury, you have now heard all the evidence. [The counsel clamoured.]

L. C. J. Gentlemen, you shall not overrule me so: Because I am willing to hear every body, therefore you impose upon me. You shall have law, by the grace of God, as far as I am able.

Attorney-General. We have now done with the evidence on both sides, and you do now see the right of the lord-mayor, notwithstanding all the vulgar and popular discourses is asserted; it appears now upon full evidence, they themselves do not contradict it, that my lord-mayor is the supreme magistrate of this city, both for calling all your assemblies, and for dissolving them; they won't pretend against this; but indeed they make a question whether my lord-mayor can adjourn or no. Necessity of affairs requires it sometimes, if there be such a tumult, such an interruption, that they cannot proceed orderly; or if the matter be so long that they can't determine it in one day,

there is a necessity that there must be an adjournment to another time; and they give you no instances, gentlemen, that ever the sheriffs in any age did attempt it, never any sheriffs made an adjournment of his own accord. Mr. Love, he gives no instance of an adjournment, he only tells you of his supremacy at that time when my lord-mayor had nothing to do with it; and, gentlemen, at that time you must remember when he was elected, the law was otherwise when Mr. Love was elected; then the sheriffs were the tribunes of the people, and they had shut my lord-mayor quite out of their common hall, and declared that he had no power to dissolve or adjourn them. The next instance is that of sir Robert Clayton's, and how do they make that out? Sir Robert Clayton swears only upon his own memory, and what is that? he remembers just nothing. He does think the common serjeant does speak truth in some things, but he can't remember other things. But we prove not only an adjournment from Saturday to Monday, but other adjournments by special direction from sir Robert Clayton. So that whatever Mr. Love did fancy of the authority of sheriffs, to tell my lord-mayor he had nothing to do therewith; yet that my lord-mayor is certainly the chief magistrate, we have proved all along to this present time, till within these two or three years, and whenever there was an adjournment, we have proved it to you, that it was by my lord-mayor. So that it is nothing like the case put by the gentlemen on the other side; there was never any shadow of pretence for right. Whoever knows London, must know the sheriffs of London are not officers of this corporation as sheriffs, but they are the king's officers of the county, granted to be chosen by the sheriffs: They are in their particular cases judges, for choosing parliament-men, but in no corporation act whatsoever: So, that, gentlemen, you see there is no pretence for that: But admit there were, what is it like the case when a man lays claim to a wood, and he sends three for four persons, or half a dozen persons to cut it down? Yet, Mr. Wallop, notwithstanding your authority, though that be not a riot, it is a rout, where you will send such a number to raise terror in the king's people, and they will continue together after they are commanded to depart by a magistrate. But it is a different thing where men will concern themselves in a matter of public government, as if any man should pretend he hath the king's commission to take your lordship off the bench.—So that here is quite a different thing; this relates immediately to the government; here the public peace of the city is in danger, and if my lord mayor had been a person of great spirit, and had presently raised others to have suppressed this riot, then the city had been in a fine condition, but these people that would have No God bless the king, but God bless the sheriffs. There is no pretence of right can justify such a thing. Now, my lord, for a riot, this must be acknowledged to be; for many to meet together to do an unlawful thing, is a riot.

Mr. *Wallop*. And do it.

Att. Gen. And do it, I put in that too, Sir. The meeting here is unlawful, and it is as certain that my lord mayor hath power to adjourn, that is a consequence of law, if the adjournment be necessary, and he is the only judge of adjournment; and when he hath adjourned, I do say the continuing persons together to do that, which if they summoned them to do had been unlawful, is as much an unlawful thing, and a riot, as that. I would fain know, if the sheriffs had summoned all the citizens together to meet and choose sheriffs, or any others, would any man question but this is an unlawful act, a subversion of the ancient government of the city, the usurping an authority in the city contrary to the king's grant and the charter? And after they are adjourned, if they will make proclamation, and order the people to stay, and go on with the poll, is not that the same thing in point of law? Surely no man almost of common sense but will say, it is the same thing. In the case that Mr. Wallop puts, if there be any disorders committed, precedent to the magistrate's dissolving the society; that will not amount to riot; but if the magistrate comes and makes proclamation for them to depart, and they stay after, it makes a riot, if they continue still together, it is a rout and an unlawful assembly. But they say there is no proof that these gentlemen, that are in the information, are guilty of the riot; they are all parties to the riot, the very being there, and giving countenance to it, is an unlawful thing. Pray, gentlemen, if ten men should go to rob a house, and one stands off at a distance, is not the tenth man guilty of the burglary? If there be as many persons together, and three only do an unlawful act, and the others give protection, for number is always a protection, are not all these gentlemen guilty? And therefore, gentlemen, it is hoped you will settle the city by destroying this pretence, which hath been fluttering in the air, but hath no ground for it.

L. C. J. Gentlemen of the jury, this is an information against several, for a riot, and it sets forth, that there was a common hall that was called by the lord mayor for choosing several officers, and that afterwards the lord mayor did dissolve that assembly, and yet notwithstanding the defendants (so many as by-and-by I shall name to you, that they have given evidence against,) they kept together and committed a riot; it is said so particularly in the information. For the matter in fact that hath been altercated between them, the question is, whether the lord mayor for the time being hath power in himself to call an assembly, and to dissolve it? and truly as to this point, even the counsel for the defendants did one while grant it, but another while did bring witness that did know nothing of the matter, I must needs say. But for aught I see, even until this very time, the lord mayor did call the assembly, and he did dissolve it, and that they did seem to grant even at the beginning of the

cause: But then they make a distinction, but he could not adjourn it to a certain time. That was a very weak thing to say, that if the lord mayor may call and dissolve the hall, that he cannot adjourn it to a convenient hour. Suppose now the business to be done was not dispatched sooner than this time a night, so that upon the matter they must be either adjourned till to-morrow, or kept in the hall all night: Does any man think, that that magistrate that hath power to call and dissolve, hath not power to adjourn? there is no man doubted of it in fact, or law; and that it was so, sir Robert Clayton did that very thing; if there had been no precedent, it had been all one. But they make a great deal of business of it, how that the sheriffs were the men, and that the lord mayor was nobody, and that shews it was somewhat of the commonwealth's seed, that was like to grow up among the good corn. [Here the people humm'd and interrupted my lord.]—Pray, gentlemen, that is a very undecent thing; you put an indignity upon the king, for you ought not to do it, if you knew your duty: Pray, gentlemen, forbear it, it does not become a court of justice.

I will tell you, when things were topsy-turvey, I can't tell what was done, and I would be loth to have it raked up now. They might as well (as I perceive they have at another time said) have said, that the power of dissolving and adjourning might have been in the livery-men, all people, every body; and so then if they had been together by the ears, I don't know, who must have parted them, that is the truth of it. But I think their own counsel are very well satisfied both in fact and law, that the lord mayor, for the time being, hath this power of calling, dissolving, and adjourning the assembly. Then there is another thing that is to be considered, and that is this, the defendants they say, we did mistake the law, it was only a mistake of the law and nothing else; and we did do all to a good intent, and therefore it must not be a riot. To give you some satisfaction in that; first, I must tell you, that a man must not excuse himself of a crime, by saying he was ignorant of the law; for if so be that turn to an excuse, it is impossible to convict any man; if so be he must be excused because he did not know the law, then no man would be found guilty. But if it appear that the defendants did verily believe that the law was for them, that may be considered in another place; if so be that they were really ignorant, the fine, it may be, may be the less, but it won't excuse them from all. But truly, in the next place, you must consider, whether or no these gentlemen were ignorant, or whether or no they did not, in a tumultuary way, make a riot to set up a magistracy by the power of the people. For I must tell you, I have not heard by the defendants, and I will appeal to your memory, I have not heard, before this time, that ever the sheriffs did quarrel with the mayor, or continue a common hall after the mayor had adjourned it. As for these gentlemen, they could not be ignorant of it, because the daily practice before their eyes was for the mayor to do it. But this was a notion got into their heads though it was otherwise before, it must be so now; and one said, they would have no tory mayor to be mayor; thus the king should have something to do to support the mayor by his power, for aught I know. Now, gentlemen, for the parties that are accused to be in it, there is T. Pilkington, Samuel Shute, Henry Cornish, lord Grey, sir Thomas Player, Slingsby Bethel, Francis Jenks, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, and John Jekyl the elder; some witnesses are to some, and others to others, but some of them have seven or eight witnesses. There is Pilkington, and Shute, and Cornish, these had a great many witnesses against them; others have two. First, for the sheriffs, and Mr. Cornish, that had been sheriff but two years before, they kept them together after my lord mayor was gone; and to see what people they were, No, not God bless the king, no, no, but the Protestant sheriffs; so that in truth the king must be put out of his throne, to put these two sheriffs in it. It is not proved, that either of these did say so, nor the others neither, but they were those that clung to them, and they would help them, and they would set them to rights, and I know not what; and there is no other way to know in this case what they were, but by these they kept company with; and it may be, (I would be loth to say ill, it may be) it was in order to dethrone the king as far as they could; for my lord mayor, when truly he had adjourned the hall, and was going home, he had like to be trod under foot himself, his hat was down, and that was the great respect they gave to his majesty's lieutenant in the city. It is true, it cannot be said who it was, but those were the people that would have No God save the king, and those the mayor had nothing to do with. The sheriffs they would go on to poll, and cast up their books, and would make a disquisition who had most hands, and the like; three hours after my lord mayor was gone, there were so many that did countenance and foment this sort of proceedings. There is a shrewd act that was made since his majesty came in, that the villany of some men might be stopped, 13th-14th of the king, that for words in some cases makes high treason; it is well his majesty does not take any severe prosecution, but I can tell you, I would not have men presume upon it. It can't be said, you or you said so; yet they kept them together, they were they that kept all this rabble three hours together; the lord mayor does adjourn the court, and they must have some time to be gone, and thereupon would persuade us they could not get away in three hours; they ask for a poll, and cast up the scrutiny, and I know not what. There are some, and that is my lord Grey and Mr. Goodenough, how these two should come there I

know not, they had nothing to do here, and therefore I doubt it will be worse upon them than upon the rest, for they had nothing to do here, they must come to set the citizens together by the ears. My lord Grey he says, and hath called some witnesses, that he had business with sir Will. Gulston, about the sale of Corsfield in Essex; but I do not see any of his witnesses that do say he came to speak with sir William Gulston here, he came here to see how the poll went. But, look you, gentlemen, he hath given some sort of evidence, and the counsel did open it very fairly, but the evidence did not come fully. If you think he did only come upon real occasions to sir William Gulston, only to speak to him about that business, and concerned himself no otherwise, then you will do well to find him Not Guilty; if you do not, you must find him likewise as well as the rest, for Goodenough he was here to promote the matter. There is one, and truly he said, that for his part, as the rest would have No God bless the king, so truly he would have No Tory Mayor. And all this flame, must tell you, took fire from this spark, that the sheriffs might do what they thought fit about choosing officers. Gentlemen, it hath been a long trial, and it may be I have not taken it well; my memory is bad, and I am but weak: I don't question but your memories are better than mine; consider your verdict, and find so many as you shall think fit.

The Jury withdrew, and in some time returned.

Are you all agreed of your verdict?

Jury. Yes.

Who shall speak for you?

Jury. The foreman.

Do you find the defendants Guilty of the trespass and riot? &c.

Foreman. We find them all Guilty in that paper.

This is your verdict?—*Jury.* Yes.

T. Pilkington, S. Shute, H. Cornish, lord Grey, sir Thomas Player, S. Bethel, F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Key, J. Wickham, S. Swinock, and John Jekyl the elder, are Guilty.

You say they are all Guilty? &c.

Jury. Yes.

On the 15th of June following, Mr. Attorney-General moved in the Court of King's Bench at Westminster, that Judgment might be awarded against them upon their former conviction, in order to their being fined for the riot, &c. But the lord chief justice Saunders, and Mr. Justice Raymond, by reason of their indispositions, being neither of them on the bench, Mr. Justice Jones, with the consent of Mr. Attorney General, referred it to the 19th instant, when Mr. Attorney again moved for judgment, alledging the heinousness of the crime, viz. That it was an open affront to justice and magistracy, and might prove an evil precedent, if it should escape unpunished, which he prayed it might not do; but that since they had been fairly convicted, the court, in pursuance thereof, would award such fines as might deter others from the like attempts, &c. Upon this motion Mr. Williams, of counsel for the defendants, moved, That seeing there had first a Venire been directed to Mr. Pilkington and Mr. Shute, late sheriffs of London, and afterward an Alias Venire to the present sheriffs, and yet that in the information all the defendants were joined, though, as he suggested, that at the time of the first Venire some of them were not made known, and that since Mr. Pilkington, Mr. Shute, &c. had appeared upon the first, and many of the others not till the second; he humbly prayed, that an error might be thereon assigned.

To which the King's Counsel replied, That if any prejudice was sustained in the methods and manner of proceeding to the trial of the persons convicted of the riot and battery, it was sustained on the part of the king; and seeing he was willing to dispense with it, that not in the least affected the defendants, unless in redounding to their advantage; for that they had a legal trial, all of them pleading not guilty, and putting themselves upon their country, to try the issue between the king and them, which country had found them guilty of the offences before-mentioned, and that now nothing remained but the judgment of the court in awarding their fines, &c.

To this it was alledged, that seeing they were assembled in Guild-hall upon a lawful occasion, they could not be guilty of a riot, or the like misdemeanor, the legality of their first assembling not admitting thereof: but this allegation was over-ruled for these reasons; that although an assembly be never so legally convened, yet if they tumult or break the peace, the legality of the assembly cannot bear them out: and moreover, that when the lord mayor had adjourned the poll, the assemby was no longer a lawful assembly, but ought immediately to have departed to their respective habitations, which the defendants not only delayed to do, but in contempt of authority continued the poll, and in a riotous manner assaulted the person of the mayor. And that for inference, if a congregation be assembled at a church, to hear divine service, which in itself is lawful; yet if blows happen, or a riotous or disorderly tumult is made, the legality of the meeting shall in no wise excuse the authors of such disorders from the penalties of the law, &c. of which opinion were not only the counsel for the king, but the judges likewise.

These, and such-like, being the arguments of this day, Mr. Justice Jones being indisposed, and Mr. Justice Raymond not coming upon the bench, the passing sentence was deferred till Friday the 22nd instant, and from thence till Monday the 25th instant, at which time Mr. Justice Jones being indisposed, it was put off till Tuesday, the 26th of June; when Mr.

Attorney moved for judgment, requiring that the parties found guilty upon the information, might be fined; and was seconded by Mr. serjeant Jefferies; both of them praying that they might have good fines set on them, as an example to deter others from the like attempts; as also did Mr. Jones, of counsel for the king; when, on the other side, sir Francis Winnington, Mr. Williams, Mr. Wallop, Mr. Pollexfen, Mr. Thompson, and Mr. Holt, of counsel for the defendants, urged many arguments for the extenuation of the fines, seeing they were at the mercy of the Court, alledging, that the defendants did that of which they were convicted rather out of ignorance than malice, or any design they had to injure or affront the government; as not being then capable to determine, whether the right to adjourn the common hall lay in the lord mayor or sheriffs. But after the arguments on both sides had been heard, Mr. Justice Jones proceeded to declare the heinousness of the fact, and what an evil precedent it might prove if it should pass unpunished; and after some conference with Mr. Justice Withens, he proceeded to award their fines as followeth:

On Thomas Pilkington, esq. by reason of his being a prisoner, only 500*l*. S. Shute, esq. 1,000 marks, Ford lord Grey of Werk 1,000 marks, Sir Thomas Player, kt. 500 marks, Slingsby Bethel, esq. 1,000 marks, H. Cornish 1,000 marks, Francis Jenks 300 marks, R. Freeman 300 marks, R. Goodenough 500 marks, John Deagle 400 marks, Robert Key 100 marks, John Wickham 100 marks, S. Swinock 500 marks, and on John Jekyl, senior, 200 marks; all of them appearing in court, except the lord Grey, Mr. Key, and Mr. Goodenough, and according as they appeared to be of ability, so were their fines regulated.*

This Judgment was afterwards reversed in parliament, 1 Wil. and Mary; and the defendants petitioned, that the prosecutors and judges might be excepted out of the then intended Act of Grace.

* It appears from the account of this judgment published by Langley Curtis in 1683 that on the same day in the Court of King's Bench one Mr. Turner of Rye (in Narcissus Luttrell's "Brief Historical Relation" he is called Mr. Turne the pretended mayor of Rye) in the county of Sussex, was fined 200 marks for making a riot upon the mayor of the said town, and two of the town officers fined 20 marks each for assisting him therein, and strictly commanded to deliver the ensigns of the mayoralty, which he had seized into his hands under pretence that he had been elected mayor of the said corporation.

See, also, in this Collection, A. D. 1684, the Trial of Sacheverell and others, for a riot at Nottingham in opposition to the new charter which had been granted to that town.

To the KING'S most Excellent Majesty:

The humble PETITION of Sir THOMAS PILKINGTON, knt. Lord Mayor of London, Slingsby Bethel, esq. Samuel Swinock, John Deagle, Richard Freeman, John Jekyl, John Key, and John Wickham, in behalf of themselves, and of the respective Executors and Administrators of sir Thomas Player, kt. deceased, Henry Cornish, esq. deceased, Samuel Shute, esq. deceased, and of Francis Jenks, deceased.

"Sheweth; That your petitioners, and the said deceased persons, were, in the year 1682, and 1683, by the contrivance and confederacy of sir John Moore, kt. Sir Dudley North, kt. Sir Peter Rich, kt. Sir Edmund Saunders, kt. late Chief Justice of the King's Bench, and some others, prosecuted and convicted for a riot; the fact objected against them being no other in truth, than the peaceable doing their duties as citizens of London and Englishmen, in election of sheriffs for the said city and county of Middlesex.

"That in the proceedings upon the said pretended riot, many notorious violations of the law were committed, and your petitioners denied common justice by the combination and confederacy of the persons last above-named, and others; insomuch that your petitioners, and the said deceased defendants, were by judgment of the Court of King's-Bench, in Trinity Term 1683, unreasonably fined 4,100*l*. and were, by imprisonment and otherwise, forced to pay the same; which sum of 4,100*l*. was long since paid into the Exchequer.

"That at your petitioners prosecution, the said judgment was reversed, the last parliament, as erroneous; whereby your majesty stands by law liable to make restitution of the said sum of 4,100*l*. as your petitioners are advised.

"Now forasmuch as your majesty's generous undertaking in coming into this kingdom, tended only for the vindicating and establishing our religion, laws and liberties, and for relieving the oppressed; and for that it is agreeable to equity, that such as did the wrong should make the restitution: and your petitioners hoping the parliament now assembled will take the whole matter into their consideration, and pass a bill for relief of your petitioners out of the confederates estates, and not leave them to be satisfied by your majesty:

"Your petitioners therefore humbly beseech your majesty, That the said confederates, the prosecutors of your petitioners, and the judges, and others concerned therein, may be excepted in the Act of Grace,* intended by

* This Act of Grace is 2 Gul. and Mar. st. 1, c. 10, but there is no such exception in it, only of sir Francis Withens, who was excepted upon other accounts.

your majesty, as to all they did in relation to the prosecution and judgment upon the pretended riot above specified.

"And your petitioners shall always pray, &c."

On the 23rd of January 1690, sir Peter Rich attended in his place, according to the order of the House of Commons, upon a Petition from sir Thomas Pilkington,* lord mayor of London, and others, who were fined on pretence of a riot at the election of sheriffs for the city of London in 1682. The Petition was read; and sir Peter Rich was heard, what he had to say in his own defence. After which a motion was made, That leave be given to bring in a bill to make reparation to the lord mayor, and the rest of the petitioners, out of the estates of the persons mentioned in the petition.

Sir *Tho. Clarges*. I advise, that this judgment against my lord mayor, and others, may be reversed by writ of error. Where will this end, to bring these things into parliament, which may have remedy elsewhere? What a flood will you bring upon yourselves in these things? The troubles began not in the times of these gentlemen. I doubt, whether there have been any lawful sheriffs of London these seven years, ever since the charter was taken away. We have had great revolutions, a king abdicated, great wars upon us, and why should these things be brought upon us to trouble the people? I cannot enumerate the consequences. This will be an occasion of great inconveniences upon us. In the late usurpation, lord Capel, lord Holland, col. Penruddock, and others, were murdered, and yet those who sat upon them were pardoned; only some few examples were made, of the most execrable, for quieting the minds of the people. At this rate, we shall be a court to give damages out of one man's estate to another; I would reject the bill.

Sir *Henry Capel*. I observe, that arguments are used against this bill from the indemnity in 12 Ch. 2. which was occasioned by a time of great misery; but that was not the case; it was then a civil war, brother was against brother. That case is out of doors. It is said, these gentlemen may find remedy in Westminster-hall. If that was the case (as it is not) I think this house has the liberty, in such a case of importance, to take notice of it. You have been told what was done in the time of Lord Shaftsbury, and in Mr. Bethel's, but it was lord Russel's case then, and now it is time to make an example.

Sir *John Guise*. You are told, 'We must be guided by the indemnity in Ch. 2nd's time.' I hope we shall ever be at liberty of judging whether things are well or ill done. There has been something said by a member that a little surprizes me, 'That if you bring a bill to do right in this case, a court may be erected to give damages out of one man's estate to another.' There are crimes that excel others; do you know any thing of a greater degree than this? Where was there more violation of the laws, than in taking away charters? And where more of charters than London? If you will go upon matters, and not persons, must not this of charters be one? There are mixed cases in these things upon the public, and upon persons. This is an extraordinary case, and there must be such remedies applied, that no such thing shall be dared to be attempted for the future.

Mr. *Hawles*. I have some reason to understand this case. I had leave from this house to attend the lords in this case, to reverse this judgment by writ of error. If the king must give this damage, (at whose suit it was) you must give it him again. Will you make satisfaction in the bishops case? I am for that too, to every person concerned. There is no remedy but here, and I am for retaining the bill. A parliament was anciently called every year, or oftener. The parliament then was a court of justice, to relieve on extraordinary occasions. There were juries over-awed by judges: Bethel and Cornish took another course, to find honest men; this was complained of, and they must have new juries and officers, and lord Russel suffered upon it. You have the indemnity of Ch. 2. mentioned. This is not a bill of punishment, but a bill of satisfaction, to value wrongs they have done; and you may pardon them for the crimes. If you ask the value of the affection of father and children they cannot tell what they are; go as far as you can, if these are faulty, and the petitioners may come for satisfaction. It is a reasonable bill, and I hope you will accept it. Would you have a return to what you are delivered from? It is a just bill.

Mr. *Hampden*. We have a great matter before us in debate, because it is so extraordinary. This matter, it is true, does relate to a common indemnity; but, I think it is not promoted by justifying every thing that has been done, nor punishing, but to prevent, for the future, the same thing again; and that, if there be not this bill to deter men, they may fall into the same offences. Some men call this 'a punishment,' and some, 'a reparation,' but it is in a sense both. Some satisfaction and reparation ought to be made these persons according to natural

* "Pilkington was sheriff of London in the year 1682; an honest, but an indiscreet man, that gave himself great liberties in discourse. He being desired to go along with the mayor and aldermen to compliment the duke upon his return from Scotland, declined going, and reflected on him, as one concerned in the burning of the city. Two aldermen said, they heard that, and swore it against him. Sir Patience Ward the mayor of the former year, seeing him go into that discourse, had diverted him from it, but heard not the words which the other swore to: and he deposed, 'That, to the best of his remembrance, he said not those words.' Pilkington was cast in 100,000*l.* damages, the most excessive that had ever been given." Burnet.

justice, but it is one thing what a man in conscience ought to do, and what you compel him to do; it is one thing what a man in strict justice is bound to. To make men pay a sum by such a law, I cannot readily consent to it; I have heard, nothing fully to satisfy me. This truly, is an injury done, and, in conscience, they are bound to make reparation. That of Armstrong was a just judgment of reparation. Corruption is not taken in that limited sense of 'taking money:' corruption is taking a place of 1500*l*. per ann. In a common case, brave men, soldiers, condemn a man for delivering up a castle, or fort, because he is afraid to keep it; and they should have known that before he undertook to keep it. There needs not common-law, nor statute law, in the matter; it is against common sense. If you say there is no other law, you will quickly be distinguished out of all your liberties. I am of opinion, therefore, 'That the petition for leave to bring in a bill, to make reparation to my lord mayor, and the rest of the petitioners, from sir Peter Rich, and others, do lie upon the table;' but not to go barely off so, for they have done notoriously, and I cannot believe that men, able to make a common bargain, should give up their sense and reason in that manner. This was not done only against the city of London, but against the whole kingdom, and if you are not bound to give particular reparation to the persons injured, you are to the public, and in the mean time, to remove the person, sir Peter Rich, from your company.

Sir *Christ. Musgrave.* When a bill is brought in for satisfaction of injury done, it is strange that a gentleman should start another question. If you talk of removing people, it is a strange thing. Keep us to a question. This Petition sets out 'that the petitioners can have no remedy in the exchequer,' and you are told of the prudence of it. Will it be an act of prudence to give reparation, when they may have it out of the exchequer? The question is, whether they shall have a bill, or not a bill?

The Petition was read, and Musgrave was mistaken in the contents.

Sir *Robert Rich.* I see nothing in the petition as is alledged. I see, virtue is virtue still, though it wants encouragement. It is plain, the petitioners can have no remedy but here, but by an *innuendo;* therefore pray put the question.

Serjeant *Maynard.* If these gentlemen will thrust themselves into the office of sheriffs, and have made returns, they have meddled with what they had nothing to do. Whether rightfully sheriffs, or *de facto* only, that alters the case. Whenever you will have justice against the king, you must go to the exchequer for it. Never so much injury, and no remedy there? When they come there, the barons are bound to give judgment in restitution. Their only way is to send out a writ to the tally-office to pay the money. Upon the whole matter, leave them to have their liberty to have an action of law.

The question for bringing in a Bill to make reparation to the Lord Mayor, and the rest of the Petitioners, out of the estates of the persons mentioned in the petition, was carried in the negative, 169 to 152.* [4 Cobb. Parl. Hist. 341.]

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* The free election of officers, particularly sheriffs, in London, has always been a subject of much jealousy. See the Case of the Quo Warranto, vol. 8, p. 1039, of this Collection. See also London's Liberty in Chains discovered, and the Postscript to it; both published by John Lilburn, in October 1646. London's Liberties, or a learned Argument of Law and Reason, upon Saturday, December 14, 1650, before the Lord Mayor, Court of Aldermen and Common Council, at Guildhall, London, between Mr. Maynard, Mr. Hales, and Mr. Wilde, of counsel for the Companies of London, and major John Wildman and Mr. John Price, of counsel for the Freemen of London, wherein the freedom of the citizens of London in their elections of their chief officers is fully debated, the most ancient charters and records of the city examined, and the principles of just government cleared and vindicated. Published 1651. The Liberties, Usages, and Customs of the city of London, confirmed by especial acts of parliament, with the time of their confirmation, also divers ample and most beneficial charters granted by king Henry the 6th, king Edward the 4th, and king Henry the 7th, not confirmed by parliament, as the other charters were; and where to find every particular grant and confirmation at large. Published 1674. The Privileges of the Citizens of London, contained in the charters granted to them by the several kings of this realm, and confirmed by sundry parliaments comprehending the whole charter, only words of form left out. Now, seasonably published for general information, upon the occasion of the Quo Warranto brought against the said city. A Modest Enquiry, concerning the election of the sheriffs of London, and the right of chusing demonstrated to belong unto, and to have been always adjudged to reside in the lord mayor, the court of aldermen, and the common hall. The Lord Mayor of London's Vindication, being an answer to a pamphlet entitled, "A Brief Collection out of the Records of the City, touching the election of Sheriffs for the City of London and County of Middlesex," &c. The last three published in 1682.

292. The Trial of Sir PATIENCE WARD, knt.* at the King's-bench, for Perjury at the Trial between the Duke of York Plaintiff, and Thomas Pilkington, esq. Defendant, on an Action† upon the Statute *De Scandalis Magnatum*: 35 CHARLES II. A. D. 1683.

THE Jury were, Sir Thomas Bridges, kt. Henry Reynell, Thomas Herriott, Thomas Airsby, Richard Paget, John Foster, Thomas Eaglesfield, Edward Maplesden, John Sharp, esquires. James Suckle, John Olinger, Richard Fisher, gentlemen.

An Information had been preferred by the Attorney General against sir Patience Ward, for that he had maliciously and wilfully perjured himself in the court of King's-bench, upon the trial between the duke of York, and Thomas Pilkington, esq.; to which the defendant pleaded Not Guilty, and was tried May 19.

Cryer. Oyez: If any man will give evidence on the behalf of our sovereign lord the king, against the defendant sir Patience Ward, let him come forth, and he shall be heard.

Mr. *Dolben.* May it please your lordship, and you gentlemen that are sworn, This is an information of Perjury preferred against sir Patience Ward. Whereas the most illustrious James duke of York brought an action upon the statute De Scandalis Magnatum against Thomas Pilkington, wherein was declared, that, whereas he was the only brother to our sovereign lord the king, the said Pilkington did speak in the hearing of divers of his majesty's liege subjects, these false and scandalous words, 'He hath burnt the city,' (meaning the city of London) 'and is' (meaning the said duke) 'come to cut our throats.' Gentlemen, the information sets forth further, that the defendant Pilkington pleaded he was Not Guilty, and that upon the trial of this issue, sir Patience Ward was produced as a witness upon the behalf of the defendant Pilkington; and that the said sir Patience Ward then and there was duly sworn to speak the truth, the whole truth, and nothing but the truth, in the premises; and that the said sir P. Ward did falsely and corruptly swear and give in evidence to the jurors empannelled to try the issue aforesaid, 'That 'there was no mention at the time of this discourse aforesaid had between the said Thomas 'Pilkington and divers of his majesty's sub'jects, concerning the said James duke of 'York, that there was no mention of cutting 'of throats, and that before Mr. Pilkington,' (meaning the said Thomas Pilkington) 'came 'in,' (meaning the time when the discourse aforesaid was had) 'the discourse about the duke of York was over; and further, that the duke of York was not named,' (meaning at that time when the discourse aforesaid was had) whereas in truth at the same time there was mention of cutting of throats; and whereas, before Mr. Pilkington came in, the discourse concerning the duke of York was not ended; and whereas the said duke of York was named at the time when the discourse aforesaid was had, so that the said sir Patience Ward in the case aforesaid did commit wilful and flat perjury.

Attorney General (sir Robert Sawyer). My lord, and you gentlemen of the jury, sir Patience Ward the defendant stands accused for perjury, committed in a cause, that was be-

* See sir John Hawles's reference to this Case in vol. 8, p. 142.

† "In this action the duke of York had recovered 100,000*l.* damages." Former edition. Of this trial between the duke of York and Mr. Pilkington no circumstantial report has been found; notwithstanding it appears from Blaney's testimony in this Case that he took notes of it. Sir Richard Bulstrode (Mem. p. 321) says, "The jury were all gentlemen of quality of Hertfordshire (which county Mr. Pilkington had chosen) and they gave his royal highness 100,000*l.* damage, which will doubtless teach factious persons, who have lived of late with so much licence in their discourses, to govern their tongues better."

Narcissus Luttrell (MS. in the library of All Souls' college, Oxford) thus mentions the trial:

"Nov. 4th, 1682. The duke of York having some time since brought a Scandalum Magnatum against Mr. Pilkington, for words pretended to be spoken, and the same is to come to a trial at the King's-bench bar this term.

"Nov. 24th, was a trial at the King's-bench bar, in an action of Scandalum Magnatum, brought by the duke of York against Mr. Pilkington, late sheriff of London, for words spoken by the said Mr. Pilkington; it was tried by a jury of the county of Hertford; the words were, 'He had burnt the city, and was 'now come to cut the citizens throats.' The words were positively sworn by sir Henry Tulse and sir Wm. Hooker, two aldermen of London, to be spoken at Guildhall, at a meeting of the court of aldermen, in order to wait on his majesty to congratulate him on his safe return from Newmarket, and the duke on his return from Scotland.

"Mr. Pilkington made very little defence, so that the Lord Chief Justice told the jury that if they believed the evidence, they must find for the plaintiff; so that the jury, after going from the bar about a quarter of an hour, found for the plaintiff, and gave 100,000*l.* damages, the full damages laid in the declaration."

tween the duke of York plaintiff, and Mr. Pilkington defendant, and in that cause Mr. Pilkington was accused to have spoken false words of the duke of York, 'He hath burnt 'our city, and is come to cut our throats;' to excuse this, sir Patience Ward he comes, and swears positively, first, That the duke of York was not mentioned in the discourse, and therefore those words could not be meant of the duke of York; this little evasion we do not trouble you with; but they related to one Hubert, hanged many years before; however we will lay that aside, and not trouble you with it. The next direct matter, which proves it was maliciously done, that he was so ill a man, and that he had spoken such words, he swears, That all the discourse relating to the duke of York was over before Pilkington came into the room. This allegation is directly false, he swears positively, 'there was no mention made 'of cutting throats.' Gentlemen, we will first prove unto you the words; then we will prove unto you that they were false, for Pilkington did speak these words of the duke of York. Gentlemen, we will leave it to you whether this gentleman hath not forsworn himself.

Serj. *Jefferies.* If it please your lordship, and you gentlemen of the jury, I must needs say, that this is a cause of very great consequence of one side and the other; it concerns a very great person, a man that has been lord mayor of London, and I think is still an alderman of London; it is in its own nature of very great consequence, it is no less than the charging him with the crime of wilful perjury; it comes to a public audience, as it was very requisite it should. The crime we charge this gentleman with was committed in this very place, in the face of this court, and I think to the admiration and astonishment of all persons that heard this gentleman swear at that very time: and therefore, that the thing may be intelligible to these gentlemen, I shall crave your lordship's patience, to give an account how this matter was: This matter was attended with circumstances of malice, which shew it was not a slip in evidence, but a malicious perjuring himself, gentlemen; and they are these: Upon his royal highness's return out of Scotland, and coming to Newmarket to his majesty, a very loyal gentleman, then lord mayor of London, sir John Moore* by name, with some other persons, that I have in my eye, had it in prospect, as it became them to do, to so great a prince as he was, to wait upon him. My lord, there being this design of the aldermen and lord mayor to attend upon his royal highness, to congratulate his arrival from Scotland; in order there to, upon a special court-day, there was an order made, that the lord mayor and aldermen should attend his majesty, to desire his leave, that they might come and attend likewise his royal highness, to congratulate his late arrival. This I think was upon a special court, before they went to church, upon a Sunday. In order to this, there happened another meeting of the lord mayor and aldermen, to prosecute this design of their's, to wait upon his royal highness, to congratulate his arrival; and thereupon an intimation was given to sir Patience Ward, with one of the sheriffs, Pilkington, of their intentions. At which time, sir William Hooker, and another worthy gentleman, sir Harry Tulse, happening to be together in a place, which I presume some of you do well know, in the long gallery or antichamber to the council room, where the lord mayor and aldermen most usually sit, some discourse arose touching the occasion of their then meeting; whereupon a question was proposed, Whether they should wait upon his royal highness or not? One of these gentlemen was pleased to say, at that time, that it was too late now the court had determined it, there being then present this sir P. Ward, and these two gentlemen along with Mr. Pilkington then sheriff, who, in objection to the proposal of waiting upon the duke of York, (after this discourse was over, and after they had mentioned the duke of York's name to him) said, 'He 'hath burnt the city, and is now come to cut 'the throats of our wives and children.' This, gentlemen, was to deter and fright the others from going, and given as a reason why he would not go to attend the duke of York. My lord, this thing happening thus, an action was brought for this, and came to a trial before your lordship. It is very true, in that trial we did only produce sir Harry Tulse, that was present, and he swore to all the words about 'burning the city,' and likewise to the 'cutting 'of throats.' But sir Patience Ward, without any manner of hesitation; nay, and not only that, (I appeal to the memory of those that heard him swear at that time) but boasting himself, as having as good a memory as any man in England, (though he was cautioned at that time to have a care what he swore) did positively say, 'The duke of York was not 'named after Pilkington was there; that the 'discourse of the duke of York was done be'fore he came in.' He doubled his evidence on purpose to make the thing more plain. But afterwards, when it came a little further to be discoursed of, I appeal to the memory of the court, and the gentlemen at the bar, whether he did not flutter about in St. James's Park; and out comes Hubert; the duke of York was not named, but Hubert, Hubert, I clapped my hand upon his mouth, says I, you mean Hubert, and so we had got Hubert into the cause on purpose to shuffle out the business about the duke of York. My lord, after this (I do it to refresh the memory of these gentlemen) he was positive, and said, 'I do positively say, 'there was not a word of cutting of throats,' even to the surprize not only of all the auditors, but even of all those people that were concerned in affection for him, as well as they who were engaged in the cause that they were to support. My lord, in the first place, we will

* See North's mention of him, p. 188, of this volume.

give you an account, that it was a designed and malicious evidence, necessary for the bringing off that man, for if there was not a word spoken of the duke of York, then our action was no action; if there was not a word spoken of 'cutting of throats,' then, of consequence, the verdict must have been against us; and therefore finding there was but one evidence, which was sir Harry Tulse, against his evidence, that made him swear so positively; but afterwards your lordship may please to remember, we called sir Wm. Hooker (a gentleman of well known integrity) to preserve the credit of so great a prince, maugre the malice of all his enemies. I speak this to shew it is fit, it is necessary to clear this cause. In the first place we will prove what is recited in this record, and give you an account what this person did swear at the time of the trial. The matters, that I have opened, I think they will sufficiently satisfy the court and the jury, as they did satisfy the jury before, that what sir Patience Ward swore then, is false now, and is false then.

The Record of Pilkington's Trial read.

Serj. *Jeff.* Read the Information. The Record was 'Anno prædicto,' but when it was recited in the Information, it was 'Anno ultimo 'supradicto.'

Mr. *Ward.* It is necessary, when we come by way of recital of the record, to recite the very words in the record, now in the record it is 'Anno prædicto.'

Mr. *Williams.* My lord, they are reciting the record.

L. C. J. (sir Edm. Saunders). They do not recite it 'in hæc verba,' the substance is true, the words are varying from the record, in the record they are 'Anno prædicto, but in the recital, 'Anno ultimo supradicto.'

Mr. *Williams.* That is not the same in substance as to say 'Anno prædict.' 'the year be'foresaid,' there are many 'Anni prædicti,' and that may refer to any of them; if there had been but one, it might have been so, but when there are several years mentioned before, 'Anno 'ultimo prædict.' restrains it to the last year 'prædict.'

Att. Gen. You may spend as much time as you will; in the first record there was but one year mentioned.

Mr. *Recorder* (sir George Treby). That the city of London was burnt in the year 1666; that was one year mentioned before, I am sure.

Att. Gen. There are several years mentioned in this record; there we must say 'ul'timo prædict.'

L. C. J. The objection is, That whereas it was in the Record 'Anno prædict.' here you have more, and when you recite 'Anno præ'dict.' you add 'ultimo.'

Serj. *Jeff.* We could not do it otherwise, my lord.

L. C. J. As if a thing could not be well except it were in such precise words: That was 'Anno prædict.'; this, you say, is 'Anno ultimo 'prædict.' Now if the first had been 'Anno 'ultimo supradict.' and in this you had said 'Anno prædict.' when several were mentioned, then it might have been an objection; now it is not.

Serj. *Jeff.* If sir Patience had been as exact in swearing, as you are in observing, he had done well enough.

——. Call Mr. Hatch. [Who was sworn.]

Mr. *Williams.* Pray let's know your name, sir?—*Hatch.* My name is Hatch.

Serj. *Jeff.* Pray, was you present at the trial between his royal highness and Mr. Pilkington?

Hatch. Yes, my lord, I was present.

Serj. *Jeff.* Was sir Patience Ward produced as a witness?

Hatch. Sir Patience Ward was sworn.

Serj. *Jeff.* What did he swear?

Hatch. He did swear, upon his oath, That the sheriffs were not present; that there were some aldermen at the table in the matted gallery in Guildhall smoking a pipe of tobacco, and that they had some discourse about waiting upon the king and the duke, pursuant to an order from my lord mayor the day before, and he said, the sheriffs were not present.

Serj. *Jeff.* What sheriffs?

Hatch. The sheriff: and he did afterwards say, he did positively affirm, upon his oath, that Pilkington did not come in till all the discourse was over about the duke.

Serj. *Jeff.* What did he say about cutting of throats?

Mr. *Williams.* Good, Mr. Serjeant.

Mr. *Jones.* You say he positively said, there was no discourse about the duke of York after Pilkington came in.

Hatch. But then after, my lord, he said; I do positively affirm, upon my oath, that Pilkington did not come in till all the discourse was over concerning the duke of York. And further, there was discourse about burning the city by the Papists, saith Pilkington, He hath burnt the city; with that sir Patience Ward took him by the shoulder, saying, Explain yourself: What! you mean Hubert,* I warrant you? Yes, said he. He being asked the question, Whether any thing of the duke was named, he said, No: And further, Whether there was not any mention of cutting of throats, he did positively say, There was no mention made of cutting of throats.

Mr. *Williams.* Mr. Hatch, Where were you placed at the trial?

Hatch. At the trial, Mr. Williams, I stood just there.

Mr. *Williams.* Had you a pen and ink about you?—*Hatch.* Yes, Sir, I write characters.

Mr. *Williams.* Pray, Sir, did you take the words in writing then, or no, in the court?

Hatch. I believe I might, I cannot positively tell.

* See the Examinations concerning the Firing of London, vol. 6, p. 807, of this Collection.

Mr. *Thompson*. Have you your notes here?

Hatch. I think I have not.

Mr. *Thompson*. A man of a good memory

Serj. *Jeff*. We have a matter of some 30 or 40 witnesses; do not make such a rout.

Mr. *Pollexfen*. Mr. Hatch, you are repeating what sir P. Ward said; Did he, in that evidence, mention the duke of York, or not?

Hatch. He said, there was discourse about going to the king at St. James's, but not to the duke. Sir George Jefferies asked him that very question.

Mr. *Pollexfen*. Let him now repeat the evidence which he swore just before.

Serj. *Jeff*. I thought that would not have been such a mighty question at this time of day.

Mr. *Williams*. I desire he may say again what was sworn by sir Patience Ward.

Serj. *Jeff*. Begin and repeat, Sir, in what manner he swore, in the very same form he spake then.

Hatch. Sir Patience Ward, being sworn and examined upon the account of Mr. Pilkington, did say, That there were some aldermen met at the matted gallery, the matted chamber in Guildhall, and smoking a pipe of tobacco, and there was discourse of waiting upon the king, and the duke, pursuant to an order of the lord mayor the day before; and being asked, Whether Mr. Pilkington was not present, he said, The sheriffs were not present, but at the court of taking licenses in Guildhall, and that there was a discourse about burning the city by the Papists, and, says Mr. Pilkington, Hath he burnt the city? Hath he burnt the city? Upon that, sir Patience Ward took him by the shoulder, and bid him explain himself: You meant Hubert, I warrant you, saith he. Yes, saith Pilkington; and being asked, Whether there was any discourse about the duke of York, he said No; but positively said, that there was no mention made of cutting of throats.

Then Mr. *Boxton* was sworn.

Mr. *Williams*. Your name, Sir.

Boxton. My name is Boxton.

Serj. *Jeff*. Mr. Boxton, will you tell my lord and the jury, whether you remember what was said by sir Patience Ward?

Boxton. My lord, I was present at his trial, I happened to return the jury.

Serj. *Jeff*. Pray will you tell my lord and the jury, what was said by sir Patience Ward?

Boxton. My lord, I was present at this trial, having returned the jury that was to try that cause of his royal highness: I was above in the gallery, and I could not so well understand it; but as that gentleman said before, he was saying, He heard no mention made of cutting of throats; I cannot say the very words, for I took no notes.

Williams. You were in the gallery then?

Boxton. Yes, Sir.

Serj. *Jeff*. Pray, Mr. Aston, I think you was present.

Aston. I was present in the court th[illegible] and I do remember, that sir Patience [illegible] did swear, I think positively, to the best of [illegible] remembrance, that 'the duke of York was not 'named while Mr. Pilkington was by.' That is all I do remember.

Serj. *Jeff*. What do you mean by 'positively?' that he used the word 'positively?'

Aston. I think I am pretty sure he did take it positively or upon his oath.

Serj. *Jeff*. What did he take positively?

Aston. That the duke of York was not named while Mr. Pilkington was by.

Serj. *Jeff*. Do you remember any thing else?

Aston. As to 'cutting of throats,' I do not remember it. Several people have asked me, and I gave them that relation, or else I believe, that had been out of my mind.

Mr. *Wood* sworn.

Serj. *Jeff*. Mr. Wood, pray will you give my lord and the jury an account of what you heard sir Patience Ward swear, in the cause between his royal highness and Mr. Pilkington.

Wood. My lord, I was in court when sir Patience Ward gave evidence for Mr. Pilkington, and I heard sir Patience Ward say, that 'the duke of York was not named;' and that 'the discourse concerning the duke was 'over before Mr. Pilkington came in, and that 'there was no mention of cutting of throats.'

Mr. *Jones*. Did he swear these things positively, or as he believed, or heard?

Wood. To the best of my remembrance, I think he clapt his hand upon his breast, and said 'positively there was no mention of cutting of throats?'

Att. Gen. Do you speak of your best remembrance as to his posture, or to the word?

Serj. *Jeff*. Did he say that word 'positively?'

Wood. To the best of my remembrance, he said 'positively,' or 'upon my oath;' one of them he did say, I cannot tell which.

Serj. *Jeff*. Either he said 'positively,' or upon my oath.' Now, my lord, if your lordship pleases, we have given your lordship and the jury, a sufficient account how positive this gentleman was; but as positive as he was at that time, we will give you an account, that he did forswear himself.

Swear sir *James Smith* (which was done.)

Att. Gen. Pray will you tell the court what you can say?

Sir *J. Smith*. I did little think to be called to give any evidence upon the account of sir Patience Ward, considering the relation that is between us, as aldermen. I did not take particular notice, but I do remember, that he used that kind of posture as they say, and did 'positively, or 'upon his oath,' say, I cannot be certain of the words he used, that Mr. Pilkington was not there while they were discoursing concerning going to St. James's, for he did declare, the duke of York was not talked of, and I do remember a very good circumstance that he did swear so, for my lord

chief justice Pemberton was pleased to apply himself to sir Harry Tulse upon it; and I remember sir Harry Tulse made answer, 'I am 'very sorry to say it, he was there all the 'while.'

Att. Gen. Did you hear any thing about 'cutting of throats?'

Sir *J. Smith.* I do not remember that.

Sir *William Rawsterne* sworn.

Serj. *Jeff.* What say you, sir William Rawsterne?

Sir *Wm. Rawsterne.* My lord, I was here, but I took no particular notice, but I do remember, that sir Patience Ward did say, that the duke was not named when Pilkington was in the room; I can say nothing else.

Mr. *Jones.* Did you hear him swear it?

Sir *Wm. Rawsterne.* Yes, Sir.

Serj. *Jeff.* Sir James Smith, did he swear it upon his oath?

Sir *J. Smith.* My lord, I said before, I cannot say the word he expressed it in, but either 'positively,' or 'upon his oath,' he was not there all the while that discourse was.

Mr. *Pollexfen.* First he says, the discourse was of going to St. James's.

Sir *J. Smith.* My lord, as I said before, he did declare, that the sheriff that then was, Mr. Pilkington, was not by while they were discoursing of going to St. James's, for he said they did not speak of the duke of York; but the discourse was about going to St. James's, and that discourse was at an end before Mr Pilkington came in; and while they were talking about firing the city, upon that Mr. Pilkington saying, 'he hath fired the city,' he desired him to explain himself, whether he did not mean Hubert.

Sir *John Peake* sworn.

Serj. *Jeff.* Sir John Peake, I desire to know what you can say?

Sir *J. Peake.* I was present at the trial, and sir Patience, I do remember this, laid his hand upon his breast, and either said positively, or upon his oath, I cannot tell which, one of the two I am certain of, 'that Mr. Pilkington was 'not by when the duke of York was mentioned.'

Serj. *Jeff.* What about cutting of throats?

Sir *J. Peake.* There was something said of cutting of throats, but I am not so positive.

Serj. *Jeff.* Sir Thomas Field, I think you was one of the jury that tried the cause.

Sir *T. Field.* Yes, Sir, I was upon the jury.

Serj. *Jeff.* Pray do you remember that sir Patience Ward was a witness?

Sir *T. Field.* Yes, I do remember it.

Serj. *Jeff.* Do you remember what he swore?

Sir *T. Field.* I do remember he swore the duke was not named; that I can remember.

Att. Gen. Do you remember any thing else?

Serj. *Jeff.* Do you remember any thing about cutting of throats?

Sir *T. Field.* There was something, I cannot positively say that.

Serj. *Jeff.* Do you remember what other words he said?

Sir *T. Field.* He did say likewise, That Mr. Pilkington was not in the room when any thing was spoken relating to the duke of York.

Serj. *Jeff.* Sir Francis Butler, pray will you please to give my lord and the jury an account whether you were of the jury, in the cause between his royal highness and Mr. Pilkington?

Sir *F. Butler.* I was of that jury.

Serj. *Jeff.* I think you were the foreman, Sir.—Sir *F. Butler.* I was the foreman.

Serj. *Jeff.* Pray do you remember sir Patience was produced as a witness?

Sir *F. Butler.* He was produced.

Serj. *Jeff.* Do you remember any thing he swore? and what?

Sir *F. Butler.* The Evidence he swore (which I thought we had reason to observe, for the great question was, whether the words related to the Duke of York, or no?) was, that it did not relate to the duke of York; and sir Patience Ward was proving alderman Pilkington was not in the room while they discoursed of the duke of York, and that the duke of York was not named.

Serj. *Jeff.* Did he swear that positively?

Sir *F. Butler.* To the best of my remembrance, positively; I heard nothing of qualification at all.

Serj. *Jeff.* This is a gentleman of great worth and the foreman of that jury.

Sir *F. Butler.* We did debate it after we went out of the court, among ourselves, before we brought in our verdict, and I remember something more in it, for we should have laid a little more weight upon his evidence, if he had not said, that when sir William Hooker took some exceptions at his words, and asked, What do you mean? sir Patience Ward then laid one hand upon alderman Pilkington's mouth, and, as I remember, the other upon his breast, and asked, What do you mean? And the other answered, Hubert. That made us believe his evidence was to be laid by.

Serj. *Jeff.* Now, my lord, if your lordship pleases, I think we have sufficiently satisfied your lordship, and the jury, what words he swore; now we will prove that they were false.

Att. Gen. Sir Harry Tulse, pray, will you acquaint my lord, and the jury.—We will ask you first; sir Harry Tulse, were you present when this gentleman swore?

Sir *H. Tulse.* I was present; I sat down on a fore-seat, and he gave his evidence behind: I never saw him touch the book, nor kiss it.

Att. Gen. What did you hear him say?

Sir *H. Tulse.* I was a little discomposed at what I had heard him say, and so I am not able to give an account, and I thought I had some reason for it.

Serj. *Jeff.* Why, what reason? Was it because he swore truly or rashly?

Mr. *Thompson.* Good Mr. Serjeant, do not lead so.

Mr. *Williams.* I think it is a reflection upon an alderman to be led by any.

Att. Gen. Mr. Williams, I can shew you, you have led aldermen, and against law too.

Sol. Gen. Mr. Finch. Will you please to to give my lord an account whether Mr. Pilkington was by when there was any discourse about the duke of York?

Sir *H. Tulse.* Gentlemen, I do not know whether you expect the account I formerly gave; that I think I have very perfect in my memory.

Att. Gen. Give an account of that passage.

Sir *H. Tulse.* The evidence I gave was this; upon the 10th of April, (I will not be positive, I think it was that day) according to an order of court made the day before, we met at Guildhall; there was sir William Hooker, sir Patience Ward, sheriff Pilkington, and myself, I remember no more; and alderman Pilkington said, 'He burnt our city, and is come,' or 'will come,' one of these two words, 'to cut our throats.' This was the evidence that I gave, this was true. I was asked by the court, what was the preceding discourse, whether made by alderman Pilkington, or sir Patience Ward, I cannot be positive; but it was concerning an order of going to St. James's, or to the duke of York, one of the two; he did complain of that order, they were complaining of that order, and seemed to me as if they would have it re-debated; I made answer, it was too late, for the court had agreed it.

Att. Gen. Was there any discourse concerning the duke of York while Mr. Pilkington was by?

Sir *H. Tulse.* Alderman Pilkington was by all the while the discourse was.

Att. Gen. And was there any discourse about the duke of York?

Sir *H. Tulse.* I did never hear the duke of York named by alderman Pilkington at all, as I remember; they complained of the order made the day before, that is, concerning going to St. James's, or to the duke of York, seeming to me as though they would have it re-debated; upon which I made answer it was too late now, for the court had agreed it; and then came these words, 'He hath burnt our city, and is come,' or 'will come, to cut our throats.'

Att. Gen. Do you say Pilkington was there when the discourse was?

Sir *H. Tulse.* Yes, Sir.

Serj. *Jeff.* Sir H. Tulse, I would ask you a question, by your favour, you say there was then mention of cutting of throats, and you say Mr. Pilkington did not name the duke of York himself, that you cannot say; but you say he was there while was a discourse about going to congratulate the duke.

Sir *H. Tulse.* I cannot be positive of that; we discoursed about the order, that was the order that was made before, to congratulate the duke of York: I cannot say that alderman Pilkington did ever name the duke of York, but he was present at that discourse.

Sol. Gen. Sir Harry Tulse, you say there was mention made concerning the debating the order, was there mention made of the order? Did they name what order they would have re-debated?

Sir *H. Tulse.* Yes, Sir. The order was this, an order made the day before, that we should go and congratulate the king's safe return, and with the king's good leave or licence, we should then congratulate the duke of York, that was the subject matter.

Serj. *Jeff.* Pilkington was present then?

Sir *H. Tulse.* He was present there.

Serj. *Jeff.* And upon that discourse, pray, sir Harry Tulse, did Pilkington say these words 'He hath burnt the city, and is come to cut our throats?'

Sir *H. Tulse.* No, Sir, that did not immediately follow.

Sol. Gen. Sir Harry Tulse, what order did they say they would have re-debated?

Sir *H. Tulse.* I took it for the order made the day before.

Sol. Gen. Did they name the order?

Sir *H. Tulse.* I did make mention of the order, that the court had agreed it, and it was too late for that.

L. C. J. He says it was too late to be debated or spoke of in court, I apprehend it so.

Just. *Jones.* Was the duke named, or not?

Sir *H. Tulse.* At that time, truly, Sir, I cannot positively say he was named; for the debate was about the order made to congratulate the duke of York, or of going to St. James's; one of them, I am sure, was named, but I cannot be positive.

Jury-man. I desire to know whether this gentleman was there all the while.

Sir *H. Tulse.* My lord, I believe I was there all the time that there was a word spoke in this matter, the whole time.

Serj. *Jeff.* Sir Harry Tulse, I would ask you another question: Who did you apprehend to be meant, when Pilkington said, 'He hath burnt the city?' Who do you think he meant by that?

Sir *H. Tulse.* I will answer any thing that the court thinks fit I should answer. I humbly pray my lord and the court would ask me questions.

L. C. J. Sir Harry Tulse, it was said the city was burnt. Pray who did you apprehend was meant that burnt the city? Who did they mean?

Sir *H. Tulse.* Who did I apprehend, my lord? truly, my lord, I think I was the man that made answer, that it was Hubert that burnt the city, because he was hanged for it.

Just. *Withins.* Did you apprehend it was Hubert?

Sir *H. Tulse.* My lord, there was a talk of Hubert; and I remember sir Patience Ward took hold of it, and bid him explain himself, 'Who do you mean? Hubert?' And then there [illegible]

[illegible] city, for that he was hang[illegible]

L. C. J. Hark you; I would ask you one question, if you please; You heard the expression of cutting of throats, 'he is, or will 'come to cut our throats?'

Sir *H. Tulse.* Yes, my lord.

L. C. J. Pray who did you apprehend should be meant by that? He could not mean Hubert, surely, for that?

Sir *H. Tulse.* My lord, I must give my opinion, that it was the duke of York.

Mr. *Thompson.* Did you understand that he meant so at that time?

Serj. *Jeff.* Sir William Hooker, will you give an account of it?

Sir *W. Hooker.* My lord, I will, as near as I can, tell the very words; I may lose some words, but of the matter of fact, I am confident I shall miss nothing. We met in pursuance to an order made the day before; the order was made to meet on the Monday following, to wait upon the king and the duke of York. My lord, accordingly, when I came into the gallery, I found sir George Waterman sitting on one side, and I sat opposite to him, and sir Henry Tulse at the end of the table; not long after, came in sir Patience Ward, my lord, sir Patience Ward sat down close by me, and Mr. Pilkington stood at the other end of the table opposite to me. My lord, to the best of my remembrance and belief, sir Patience Ward did move, that we might consider this business of waiting on the duke, and, my lord, answer was made, I do believe by sir Henry Tulse, that it was now too late, for my lord mayor was come, and would be going; upon his saying it was too late in this manner, Pilkington standing at the end of the table, said these words; 'Hath he burnt 'the city, and is he come to cut our throats?' Upon this, my lord, I replied; Brother Pilkington, said I, thou art infinitely mistaken in this point; thou mayest as well charge it upon a child unborn as upon him; for the duke of York was as careful in the fire to preserve the city at the same time, in a yard in Coleman-street, as any who was by was; though the ashes came upon our heads; and I never knew a man look more carefully than he did at the same time. This, my lord, is the substance, but I can't say that Mr. Pilkington made a reply either one way or other, but I think there was something of Hubert spoke besides. Then sir George Waterman went away, and I went away afterwards.

Att. Gen. So that you are positive that that Pilkington did say, 'he is come to cut our 'throats?'

Sir *W. Hooker.* 'Hath he burnt the city? 'And is he come to cut our throats?

Serj. *Jeff.* And did you immediately tell him this of the duke of York?

Sir *W. Hooker.* Immediately.

Sol. Gen. I think you say it was pursuant to an order about waiting on the duke of York?

Att. Gen. Did you name the duke of York?

Sir *W. Hooker.* I did name the duke of York to Pilkington, after those words were spoke.

Serj. *Jeff.* Pilkington was there then before the discourse of the duke of York. Was sir Patience Ward there while the discourse was, concerning cutting of throats?

Sir *W. Hooker.* I am not able to swear whether sir Patience Ward did hear it or no; undoubtedly he was there.

Sol. Gen. Sir William, do you think that sir Patience Ward did wink when he stopt his mouth, or no?

Sir *W. Hooker.* Truly I did not see him stop his mouth.

Sol. Gen. Sir William, was it plain to you that he meant the duke of York?

Sir *W. Hooker.* I am not able to know other men's thoughts; but certainly nothing could appear more plain.

Sol. Gen. Was the subject-matter of discourse concerning the duke of York?

Sir *W. Hooker.* About that, and nothing else.

Serj. *Jeff.* He named the duke of York, did he?

Sir *W. Hooker.* He did not name the duke of York; I don't say that.

Serj. *Jeff.* But you named him.

Sir *W. Hooker.* Yes, Sir.

Att. Gen. Was that all you discoursed of?

Sir *W. Hooker.* This is all.

Serj. *Jeff.* Here is the order.

Mr. *Williams.* We agree the order.

Serj. *Jeff.* For the present we will rest here, and see what account they will give.

Mr. *Recorder.* May it please your lordship and you gentlemen of the jury; I am of counsel for sir Patience Ward, the defendant. My lord, as the counsel for the king say they will rest it here, so if we should rest here too, I think there is nothing proved that sticks upon us. My lord, I observe first, that of all their witnesses they produce concerning the words in court, there is not one of them all, but the first, pretends to be a penman, and he says he believes he did write, he can't tell whether he writ or no, and he can't tell whether he hath his notes about him, and this is all we can have of him. And the truth is, they vary so much among themselves, that that is enough to make any one wonder, on the whole speaking of the words. And we see these worthy aldermen are very cautious; they did expect to be called upon their oaths, I did take particular notice of it. The truth is, my lord, for this matter, it is certainly as great and heinous a crime as any can be, and I believe these gentlemen will think, that in this case, they should have no less evidence to convict this gentleman of this foul crime of perjury, than to convict him of any crime that concerns his life. The truth of it is, if such a foul disreputation and scandal should stick, yet the jury must have plain proof. If there were a rash word, if there were a mistake in a person's remembrance, it is not every slip that will criminate a man of perjury, it must be a wilful and corrupt forswearing a man's self against his own knowledge, and nothing less than that is sufficient. My lord, it is agreed on all hands, the record shews it, that the duke hath recovered a verdict. The cause went for him. If the duke would have had a verdict, he hath it; if he would have had more damages, for aught

I know he might; he hath more than 100,000*l.* for he hath all costs, to the utmost farthing. My lord, in cases of this nature, a man's words must be taken together. Your lordship will acquaint the jury, that if there be any thing in any part of his evidence, that does explain, that does limit, that does qualify it, the whole discourse must be taken as one entire evidence, and that he shall have the advantage of it in every part. My lord, the use I would make of this is to this purpose, that whatever these witnesses fix upon him, they do it by culling and picking out pieces of words; they don't pretend upon their memory, much less upon writing, that they are able to repeat the whole evidence. Your lordship does very well remember the lady Carr's case, a greater and plainer instance than this, if it were proved as it was pretended, in chancery; she swears she never received money of such a man, and she made a second answer, and there she says she received no money after such a time, and it was resolved, that that should be taken together, and that that was no perjury. My lord, we shall insist upon the two things: first of all, that the words were not spoken as they are laid, that they were not sworn by sir Patience Ward as they are laid and charged in the information, for they are charged there positively and directly; but we say they were spoken with all the caution that any man can speak them with, 'as he believed,' and 'to the 'best of his memory,' and 'as he apprehended;' and this, I say, circumscribed with great caution and great tenderness. If they had been spoken as they are laid, yet this could not be perjury; that is the second thing. So that if it fall out that he was mistaken in this, your lordship will acquaint the jury, that a rash oath is not perjury, if it were so. My lord, as to the latter part, sir Harry Tulse does go a great way; for he says, that he can't take upon him to say that sir Patience Ward ever saw Mr. Pilkington; if he did never see Mr. Pilkington, how can he be charged with perjury then, for saying he was not there? Under favour, if he did not see him there, he must swear according to his senses, that he was not there, and you cannot charge perjury upon that. It demonstrates the uncertainty of these words, that when they come to lay the declaration, they are fain to lay these words four several ways, as they do. And yet these two worthy aldermen say, they took down the words that very day. If these words were so uncertain then, though they were writ down, what should make them otherwise now?

Att. Gen. There hath not been such a word said yet.

Mr. *Recorder.* We will prove it, Sir, As to the third point, we say this: it is charged there was no cutting of throats, no mention of cutting of throats; as to that, my lord, I take it from one of their witnesses mouths, that is, Mr. Buxton; he says, that sir Patience Ward swore, that he heard no mention of cutting of throats; under favour, Sir, to say that there was no mention of cutting of throats, that is positive, that there was no such thing spoken; but their own witness says, that there was no such thing heard. Can there be a greater difference than for a man to say, there was no such word spoken, and to say, there was no such word heard by me? This of cutting of throats, if it were spoken at all, though I believe it was; for I have that good opinion of these worthy aldermen, I mean sir William Hooker and sir H. Tulse, that I presume there was something about cutting of throats; but I answer, that sir P. Ward might not hear it. And I think they have given a very good ground for it: says sir H. Tulse, is he. or will he, come to cut our throats? Whether it were 'is,' or whether it were 'will,' that he cannot tell. Sir Wm. Hooker, says he, is come to cut our throats: one speaks affirmatively, the other interrogatively. Sir H. Tulse says it was our throats; says sir W. Hooker, the throats of our wives and children. Do not these two aldermen differ as much between themselves, as either or both of them do with sir P. Ward, when sir Harry Tulse shall say, there were no wives and children mentioned? It is no reflection at all, and I hope there will be no cause to reflect upon the other alderman. The next point is, that there was a discourse concerning the duke of York, and that it was before Mr. Pilkington came in. Here the witnesses vary extremely; one says before he came in; another says, before he came to the table; another says, while he was in the room; all these varieties we find in the witnesses that swear the words out of sir P. Ward's mouth; and certainly sir P. Ward would never say these words; it is impossible to say the discourse concerning the duke was ended, when in the very next words he says, the duke was not named at all: for, my lord, sir H. Tulse says, he was never named. But, my lord, besides this, if I say he was not there in the sight and view of sir P. Ward, he is not guilty, be it true or false, that he was there before the discourse ended; for it is a long room, and no man can say but a man might be behind sir P. Ward as he sat at the table. The second thing, my lord, is this, that the duke was not named; that he is charged to have sworn. My lord, the evidence that he delivered was, that the duke was not named in his hearing. Now sir Harry Tulse says the very same that sir Patience Ward did, that there was a discourse about an order, he says, but nobody named the duke, and sir William Hooker says, the duke was not named.

Just. *Withins.* He says he cannot say he was named.

Recorder. 'Till after the words spoken; and, my lord, it was so doubtful, that it seems there was need of explication; for the words, (under favour) as proved, do not relate to cutting of throats but to the burning of the city; and what sir William Hooker says afterwards, makes it more plain. If we prove these things, that sir P. Ward carried himself thus, if he

expressed himself with so much caution, under favour, that doth clearly avoid this charge in the information. But, my lord, if there were perjury, it was committed at the trial of Mr. Pilkington, and at that trial when it was committed, it was best understood; for here is no new evidence as to the words spoken in the gallery; therefore, under favour, the perjury was as observable then, and more, because it was fresh then. Now it is said, that it was with great astonishment; we shall give in evidence, that there was no such apprehension, that the court, that the counsel, that every body did apprehend it as delivered with that caution as I have opened it to your lordship: first, sir George Jefferies, in the very conclusion, asked him, if there were nothing spoke of the duke while Mr. Pilkington was by. No, saith he, not to the best of my memory, saith sir Patience Ward. Saith sir George, by reply, your invention is better than your memory. Surely that were the most impertinent thing in the world, if it had been otherwise. And every body knows sir George Jefferies is a man that would not have said such a thing, if he had not wholly referred to his memory, and given him an occasion for that reply. And Mr. Solicitor, he says these words, in repeating the evidence to the jury: sir P. Ward goes a great way to confirm that of the other aldermen, and that shews, that they did observe it far enough from perjury; and my lord chief justice, my lord, when he came to direct the jury, he says, that sir P. Ward had said, that, as he conceived, there was no mention of cutting of throats, and so on; and says he, it is easy to forget such circumstances. If, in the judgment of my lord chief justice, it were an easy thing to forget, can it be wilful perjury in any man to testify that which was spoken as he conceived? And truly, my lord, it is the more for that my lord chief justice was upon his oath as well as the witnesses: and your lordships, that sat with him, would have rectified my lord chief justice, if he had misapprehended him: and the jury did apprehend it so, and looked upon sir P. Ward's evidence as a confirmation. My lord, all these things are negative, and they do refer to the memory, and that my lord chief justice said a man may easily forget, and that is enough to excuse him. Besides, my lord, this was given in evidence seven or eight months after the time that the words were spoken; and if any man were to repeat what was said at this bar, no doubt but in seven or eight months they would differ more than sir P. Ward did from these gentlemen. Besides, my lord, he is a man of good reputation and credit, he hath borne great offices in the city, mayor and sheriff of London, and this a crime for mean persons, and we think much less evidence than this will satisfy your lordship. We will prove what was said at the trial not by the imperfect memories of people that did not write, or cannot tell whether they writ or not; but by some that did take very exact notes, and especially by one that wrote the whole.

Mr. *Williams.* My lord, the question is, what was spoken by sir Patience Ward. My lord, if sir Patience did not swear as they have laid it in the information, sir Patience is not guilty. They have laid the information thus: That as to the cutting of throats it was sworn positively by sir Patience; but if sir Patience did only speak as by hearsay, as he heard, that there was no mention of cutting of throats in his hearing, then we are not guilty. My lord, how far then the evidence doth touch us in this matter, how far they have proved us guilty, is to be considered. I do not find, that any one witness in this trial says, that sir Patience did swear positively, that there was no mention of cutting of throats. Every man that speaks, speaks to the best of his memory, and to the best of his knowledge, and no otherwise; and I will appeal to your lordship, upon what every witness hath said, whether any witness can be convicted of perjury; for every man hath appealed to his memory. Observe every witness, and not any of them do agree. The two aldermen that were then sworn, one of them, sir Harry Tulse, tells you of the discourse concerning coming to burn the city, and cutting of throats: as I take it, sir Harry Tulse said it by way of question, 'Is he come, is he come to cut our 'throats?' Sir Wm. Hooker tells it positively, 'He is come, he is come to cut our throats.' If gentlemen do vary, as these two witnesses, and have several apprehensions of the same thing, it ought to have no influence upon this. In this case, we are here for wilful perjury. If it be a mistake of the memory, that will never come up to perjury. We will make it out, that it was spoken with great caution and restriction. And then for the other of the two assignments, if this be true, that there was no discourse of the duke of York, then the second will naturally fall. The first thing is this, that he should swear there was no discourse of the duke of York; if this be true, that there was no discourse of the duke of York, then the second will fall. If the discourse of the duke of York was done before Mr. Pilkington came into the room, if there were no discourse of the duke of York, it is impossible that should be the meaning. And here I must observe, sir H. Tulse is a thousand witnesses in this case; he tells you expressly, that there was no discourse of the duke of York, he hath told you plainly there was no discourse of the duke of York, nor any discourse of the duke's name; and what says sir H. Tulse? He says very plainly, there was a discourse of an order made the day before. We allow the duke is mentioned in that order, but the question is, whether there was mention of the duke's name at that time. If you believe sir Harry Tulse, there was no mention of the duke's name.

Just. *Jones.* He did not remember that there was. He did not remember that the duke of York was named.

Sir *Fra. Winn.* By any body.

Just. *Jones.* He does not say, that the duke was not named.

Mr. *Williams.* Sir Harry Tulse is as much obliged to remember in this case as any man here. This will be a mighty evidence to justify my client, then the perjury will certainly fall upon these, but we will clear this too. In this matter sir Patience was a most cautious evidence, so is he, he did not say positively, that there was no mention of the duke's name, but he says, to the best of his remembrance. So that there is nothing proved against us. We will call Mr. Blaney, Mr. Blaney is a thousand men in this case.

Sir *Geo. Jeff.* Is he so?

Mr. *Williams.* He takes notes exactly. We will tell you what was sworn by sir P. Ward.

Sir *Geo. Jeff.* I have known him out in a verdict.

Mr. *Pollexfen.* That the duke of York's name was named in the discourse is not proved; nobody says it was before the words spoken.

Just. *Jones.* After the words spoken; it was then he tells you; but it was not before the time of the discourse.

Mr. *Pollexfen.* There was a discourse of going to St. James's, and upon this discourse these words were spoken, that Pilkington did speak; but the naming the duke was after the speaking of the words in the declaration: therefore, there being nobody that does prove, that the duke was named in any discourse preceding the words spoken by Pilkington, I think it is no evidence at all.

L. C. J. You make things so intricate, that no man shall be able to understand what another says, but must take it as you would have it. When it was said he had burnt the city, well, what says the other? Sir Wm. Hooker, I think, makes answer, says he, the duke is as innocent as a child, and he was one that endeavoured to save it. Must not we understand, now, that this was a discourse of the duke all this while?

Mr. *Pollexfen.* My lord, the question is, whether there were any such discourse preceding the words, or any thing in question, but what happened after the words?

Sir. *Geo. Treby.* If the duke were not named before the words, can the name of the duke refer to the expounding of them?

Sir *Geo. Jeff.* No; but Hubert, ten year after he was hanged.

Sir *Fra. Winn.* My lord, I see we are in question for corrupt and wilful perjury.

L. C. J. You had best call your witnesses for aught appears you are so yet.

Sir *Fra. Winn.* We will call our witnesses and shew what he did swear. Mr. Blaney will you acquaint my lord and the jury, whether you were by at that trial; and give an account of what you know sir Patience Ward did swear, and whether you took any notes?

Mr. *Blaney.* I was present at the trial between his royal highness and Mr. Pilkington; I did sit upon one of those stools there, and I did take notes, to the best of my skill.

Sir *Geo. Jeff.* Have you your notes?

Blaney. Yes, Sir.

Mr. *Williams.* First of all, acquaint my lord and the jury, what was sworn by sir Patience Ward.

Blaney. Having received a subpœna from sir Patience Ward about this matter, I looked over my notes, and turned down the leaves in several places.

Mr. *Williams.* Tell what sir Patience Ward swore concerning cutting of throats; and what that was; Recollect yourself about what was sworn by sir Patience concerning cutting of throats.

Att. Gen. Pray, Sir, don't look upon your notes.

Sir *Fr. Win.* Your witness don't remember whether he writ notes or no.

Blaney. I have read my notes to day, again, and looked upon them; I do find it is thus, and I do really believe to be true; for I don't know I never altered any man's evidence, either in substance or form. He did then say, Upon my oath, if it were the last word I was to speak, I did not hear one word of cutting of throats.

Mr. *Williams.* Pray, Sir, say as he said.

Blaney. These were the words: 'Upon the oath I have taken, if it were the last word I was to speak, I did not hear one word of cutting of throats.'

Sir *Fr. Winn.* Was it writ so in your notes at that time.

Blaney. It is so in my notes.

Sir *Fr. Winn.* Are your notes altered since?

Blaney. No, Sir.

Sir *Fr. Winn.* There was no thought of perjury then?

Sir *Geo. Jeff.* Not by him, but by others.

Mr. *Williams.* Are these the notes that were then taken?

Blaney. These are the notes that were then taken.

Sir *Fra. Winn.* I ask you this; did you take them as he said them?

Blaney. I did, to the best of my skill, neither added nor diminished; Sir Patience in the beginning of his evidence did say these words: That there was nothing mentioned of the duke, but of St. James's, in his hearing.

Sir *Fr. Winn.* Are you sure the words are there?

Blaney. They are here. Any man that could read my short-hand may see it.

Sir *Fr. Winn.* Were the words then taken?

Blaney. They were then taken.

Sir *Fr. Winn.* Are they altered since?

Blaney. They are not, Sir.

Sir *Fr. Winn.* How are the words?

Blaney. That there was nothing mentioned of the duke's name, but of St. James's in his hearing.

Mr. *Williams.* If this be true, it shuts out the second assignment; but however we will ask him concerning the other assignment, whether there was any discourse concerning the duke after Pilkington came in.

Blaney. If you please, Mr. Serj. Jefferies was pleased to press it upon sir Patience Ward. Sir, you were pleased to ask the question, Was all the discourse over concerning going to St. James's, or the duke of York, before Mr Pilkington came in? Was it all over before Mr. Pilkington came in? And Mr. Serj Jefferies then said———

Sir *Geo. Jeff.* What did he answer to my question? Was there nothing said of it while he was by?

Blaney. Sir Patience Ward said, Not one syllable of it to my memory; whereupon sir George Jefferies said, Your invention is better than your memory And he replied, my lord, I thank God, I have a good memory, though perhaps that gentleman hath not.

Mr. *Williams.* Was this written down in your book?

Blaney. It was then taken by me in writing, in my book.

Mr. *Williams.* Is any thing altered?

Blaney. Not one word.

Mr. *Williams.* Did you write them sitting there as they were spoken?

Blaney. Just as he said them: There I sat where Mr. Owen sits now.

Att. Gen. Do you swear you remember any part of it?

Blaney. Sir, this I do remember, as well as I can remember any thing in the world.

Att. Gen. Blaney, tell me positively what he said.

Blaney. He said, Not one syllable of it to my memory; I do remember it.

Att. Gen. Upon what question?

Blaney. Sir, of the duke's being not named, but St. James's, I do remember likewise; but I cannot well say any thing of the business of cutting of throats; I find it in my book unaltered, I do not know that I am mistaken

Serj. *Jeff.* Hark you, Mr. Blaney; I know his notes have been mistaken sometimes; I remember once upon Raree-show business, they were mistaken. Upon your oath, Sir, did you hear sir Patience Ward speak at that time any words concerning a law-suit? Look upon your notes.—*Blaney.* Sir, I will so.

Mr. *Pollexfen.* What have we to do with Raree-show? Are we trying that?

Just. *Withins.* Gentlemen, don't be angry, let the cause be tried fairly.

Serj. *Jeff.* I may ask a question, I hope. I ask a fair question, I would fain meet with that among his characters.

Blaney. Sir, I would not have looked it over, if I had met with any such thing in my notes.

Att. Gen. Can you swear any thing positively upon your notes?

Serj. *Jeff.* It is some discourse near the question.

Blaney. Then, Sir, indeed it is not in my notes.

Serj. *Jeff.* Did sir Patience Ward use the word 'positively' at any time in your notes; and tell us to what?

Att. Gen. Whether he was positive to any one thing?

Serj. *Jeff.* Did he swear positively to any one thing? And tell us to what? I desire to be satisfied by Mr. Blaney's notes. Some men can take notes on the one side, and forget things on the other.

Mr. *Williams.* Come, Mr. Beaver.

Blaney. I don't see the word positive.

Serj. *Jeff.* No, not at all.

Blaney. I don't pretend to say I have written every word.

Serj. *Jeff.* But you do pretend to write more than he said.

Mr. *Williams.* What he writ is true.

Sir *Fr. Winn.* He does not undertake to say he writ every word that passed, but whether or no he writ any word that was not said. Is all that you writ true?

Blaney I verily believe it is true.

L. C. J. Is that any manner of satisfaction when he hath not taken all that was said, and so spoiled the sense, by leaving out some of the words?

Just. *Withins.* How is it possible for a man to be a good witness, that comes and swears in one part, I know nothing of any such words; and at another time says he does not write all in his notes?

Sir *G. Treby.* Let that pass for a rule, and then no witness they produce can be believed.

Sir *Fr. Winn.* They have given evidence by witnesses *viva voce*, without notes, and make an objection, because he does not remember every passage; therefore he signifies nothing. We urge it in point of evidence, my lord; he is known to be a man very dexterous in writing short hand; in a material thing he swears to the best of his remembrance. He took them from the mouth of the person that swore at that time. My lord, we asked him, whether he writ any thing that was not said. We leave it in point of evidence, my lord, to encounter theirs.

Mr. *Williams.* We would give our evidence in, if they would give us leave.—Richard Beaver, Were you by, at Mr. Pilkington's trial?

Beaver. My lord, I was by all the while.

Just. *Jones.* Did you take notes?

Mr. *Williams.* Were you present at the trial of Mr. Pilkington?—*Beaver.* I was present.

Mr. *Williams.* Can you remember what was sworn by sir Patience Ward upon that trial?

Beaver. Yes, Sir.

Mr. *Williams.* Can you remember what sir Patience Ward swore concerning cutting of throats?

Beaver. My lord, he did say, that to his best remembrance the discourse was over before Pilkington came into the room. 'To the best 'of my remembrance, my lord, that discourse 'concerning the duke was over before Pilking- 'ton came into the room.

Mr *Williams.* How did he express it? pray swear what sir Patience Ward spake; tell how he expressed himself.

Beaver. Sir Patience Ward did say, to the best of his remembrance, that the discourse concerning his highness the duke of York was over before sheriff Pilkington came into the room, where they were smoking tobacco.

Mr. *Williams.* He said these words to the best of his remembrance?

Beaver. He did so. Upon which sir George Jefferies said again to him, that he had a good memory; and he said he had, and my lord chief justice said, you may thank God you have a good memory; my lord chief justice himself said so.

Mr. *Williams.* What did he say?

Beaver. To the best of his knowledge, he did not hear any thing of cutting of throats.

Sir *Fr. Winn.* Can you remember the way of his expression?

Beaver. The way of his expression was, as I remember, to the best of my remembrance, he did strike his hand upon his breast, and said, when sheriff Pilkington came in, he struck his hand upon his breast, and asked him if he meant Hubert, so he said, upon his salvation, or to the best of his knowledge.

Sir *Fr. Winn.* What did he say?

Beaver. He said———

Sir *Fr. Winn.* What did he say concerning cutting of throats?

Beaver. He said he did not hear any thing, as he believed.

Just. *Jones.* Of what?

Beaver. Of cutting of throats.

Just. *Jones.* Is that all he said, he did not hear any thing of cutting of throats?

L. C. J. You friend; you said that sir Patience Ward said he did not remember any thing of cutting of throats; did you say so?

Beaver. Yes, my lord.

L. C. J. And thereupon you say, my lord chief justice did commend his memory for it; pry'thee, how came he to be praised for such a great memory when he said he did not remember any thing? Thou hast not laid the plot well together.

Just. *Withens.* Was he commended because he said he did not remember?

Just. *Jones.* Where did you stand?

Beaver. I stood over-against sir Patience Ward.

Just. *Jones.* Did you hear well?

Beaver. Yes, my lord, I heard every word. He said he got honour by speaking words against the Duke of York.

Just. *Jones.* What is that?

Beaver. That Pilkington had got honour by speaking against his highness the duke of York.

Serj. *Jeff.* In the mean time look that part out in your notes, that he speaks of. Now I would ask you a question, friend.

Att. Gen. Pray will you recollect yourself? Did you hear sir Patience Ward say, to the best of his remembrance, the discourse concerning the duke of York was ended before Pilkington came in? Pray what did he say, touching the discourse of the duke of York?

Beaver. Sir, he said to his best remembrance that discourse was over.

Att. Gen. What discourse?

Beaver. Concerning his highness, that it was over.

Serj. *Jeff.* Mr. Beaver, I would ask you a question, because I know you will remember it presently. Do you remember any thing sir Patience Ward swore, that he never had a law suit in his life? Do you remember any thing of that?

Beaver. If you please, Sir, there was something said of that.

Serj. *Jeff.* Then look that in your notes too, Mr. Blaney——Pray, upon your oath, do you remember he used the word 'positively?'

Beaver. Nothing at all, positively.

L. C. J. Upon my word your memory must be commended.

Serj. *Jeff.* Mr. Beaver, where do you live, Mr. Beaver?

Beaver. I live, sir! You know well enough, sir: what would you say to me?

Serj. *Jeff.* I only desire to know where you live, Sir.

Beaver. I live in Soaper-lane, Sir.

Mr. *Williams.* He is an honest man. He was commended when he was church-warden.

Serj. *Jeff.* Many a wise man hath been in that employ.

Mr. *Williams.* Mr. Crisp, you were present at the trial between his royal highness and Mr. Pilkington.

Crisp. My lord, I was present here.

Mr. *Williams.* Can you remember, Sir, what was sworn by sir Patience Ward concerning cutting of throats, and how he sware it?

Crisp. I cannot give any perfect account: I was here, and a great many expressions I did hear, a great many I did not hear. I heard sir Henry Tulse give some account, and sir William Hooker, that Mr. Pilkington should say such words about the duke's being come.——

Just. *Withens.* Go on, pray, gentlemen.

Mr. *Williams.* Can you say any thing of what sir Patience Ward swore about cutting of throats?

Crisp. Sir Patience Ward was speaking whether or no such words were spoken that were swore; he did say there was something said, that 'he was come to burn the city,' that he did confess: but as to 'cutting of throats,' there was not a word spoken 'in my hearing,' or to the best of my 'remembrance,' or something to that purpose, I cannot be positive.

Mr. *Williams.* Can you be positive in this, Sir, that he said 'in his hearing,' or 'I cannot be positive?'

Crisp. I took it in that way, Sir.

Mr. *Williams.* Pray, Mr. Crisp, I would ask you this? Do you remember any thing he said, whether Mr. Pilkington was in the room, when there was any discourse of his royal highness, or the duke of York?

Crisp. To the best of my memory, he spake it thus: We were discoursing together about

going to wait on his majesty, and then to go to his royal highness; and we entered into some other discourse; and when we were discoursing of that, Mr. Pilkington came to the table to us: it was concerning the work of the day; and when we were about that discourse, Mr. Pilkington came to us to the table. Whether he said he was not in the room, or came into the room then, I cannot tell; but I remember he said he came to the table to us when we were about this discourse.

Sir *Fr. Winn.* Do you remember any thing that my lord chief justice said to sir Patience Ward's evidence.

Crisp. That I remember more than any other particular, because sir George Jefferies had made some reflection upon sir Patience Ward, and my lord said, Sir Patience, that is usual with counsel to speak so to evidence; but do you go on with your evidence for all that, says my lord chief justice; sir Patience, recollect yourself; it is supposed by your evidence, that you leave out those words, either about the duke of York's being named, or about 'cutting of throats; therefore, sir Patience, recollect yourself. Says sir Patience, I do speak it to the best of my memory. Says sir George Jefferies, upon that or some other time, Your invention is better than your memory, which I took more notice of than other things.

Sir *Fr. Winn.* When my lord chief justice bade him recollect himself, how did he express himself? Did he say, to the best of his memory?—*Crisp.* That he did, positively.

Mr. *Williams.* Mr. Crisp, recollect yourself, as near as may be: When my lord chief justice made that answer, either to those words of 'cutting of throats,' or the duke of York's being mentioned; was it in the conclusion of his evidence?

Crisp. It was towards the conclusion; for I went away, being very much sweltered.

Serj. *Jeff.* Mr. Crisp, did you hear sir Patience Ward say, in his evidence, that he never had any suit?

Crisp. He did speak something when you did reflect upon him, 'I do not remember that 'ever I had any thing to do with courts; my 'business is at home.'

Serj. *Jeff.* A further question I ask. Mr. Crisp, can you tell upon your oath, whether sir Patience Ward swore any thing positively?

Crisp. I do not know, Sir; I took no notes at all; I cannot swear, or declare those words which were not spoken; but still it was in 'his 'hearing,' or the 'best of his memory.'

Serj. *Jeff.* Do you remember he ever used the word 'positively,' or was positive in any part of that trial?

Crisp. I do remember he spoke it very positively; but whether he said the word 'posi'tive,' I cannot say: but still it was with this reservation.

Serj. *Jeff.* Hark you, Mr. Crisp, I will ask you one thing more. Do you take it upon your oath positively, that he used either to the 'best of his memory,' or the 'best of his be'lief,' in any thing he said?

Crisp. In his answer to my lord chief justice he did.

Serj. *Jeff.* In any other part, will you take it upon your oath, positively, that he ever used 'the best of his remembrance,' or the 'best 'of his belief?'

Crisp I said before, I did not fix it in my memory.

Sir *Fr. Winn.* My lord, he thinks it convenient to say to the best of his memory too. Call Mr. Wright.

[Here the king's counsel attempted to remark on the evidence.]

Mr. *Williams.* Pray, my lord, when we have given all our evidence intire, if they have any observation, we will submit to it; but to remark upon every witness, would occasion too many interruptions. We would give our evidence intire.

L. C. J. You will agree, that they may ask a question when you have done with them?

Mr. *Holt* (to Mr. Wright). Was you present at the trial between his royal highness and Mr. Pilkington?

Wright. Yes, Sir; and sir Patience Ward, I remember, was asked this question, Whether he heard any words concerning killing, or cutting of throats; and sir Patience Ward said, For 'killing' I heard that discourse; but for 'cutting of throats,' he never mentioned.

Mr *Williams.* You are a gentleman that exercise your memory; pray, Sir, did he say any thing of cutting of throats?

Wright. It was to 'his hearing' or the 'best of his remembrance;' he did it very cautiously.

Mr. *Williams.* Was it as he believed or remembered, Mr. Wright? Did he say positively there was no discourse of cutting of throats, positively, or with any reference to his hearing?

Wright. As far as I can remember, thus he said, There was a discourse concerning 'firing 'the city,' but not concerning 'cutting of 'throats.'

Mr. *Williams.* Did he say that positively, or to the best of his understanding?

Wright. The occasion of it was this, Sir, whether Mr. Pilkington was present when the discourse was about waiting on his majesty, to congratulate his coming to town from Newmarket, and his royal highness; sir Patience Ward did believe he was not then present when the discourse was; he was in Guildhall, with the lord mayor, licensing of ale-houses.

Sir *Fr. Winn.* When he did mention that about 'cutting of throats,' how did he express himself?

Wright. 'I believe, or do think, there was 'no such word spoken.'

Serj. *Jeff.* I would ask your parson one question.

Wright. What you please, sir George.

Att. Gen. Can you swear yourself positively what he said?

Wright. I swear thus far, according to my remembrance.

Serj. *Jeff.* I would ask him a question

Att. Gen. All issues must be tried by belief or memory; what new practice is this? Can you swear this upon your oath, or do you only say, I think or believe it?

Wright. I speak to the best of my remembrance.

Serj. *Jeff.* Mr. Wright, I would ask you a question. If I take you right, at the beginning, there was a talk concerning killing and cutting of throats; my lord, I appeal to the memory of the court and the jury, if he did not say it two or three times over. Mr. Wright, remember what I say.

Recorder. He did say it cautiously.

Just. *Jones.* He did not insist upon it.

Serj. *Jeff.* Was there any discourse, upon your oath, when sir Patience Ward gave his testimony, that there was any discourse concerning killing and cutting of throats?

Wright. He believed that the word 'killing' was not spoken in Mr. Pilkington's hearing.

Serj. *Jeff.* Now I ask you another question. Now, Mr. Wright, pray do you remember that there was any discourse concerning sir Patience's having a law-suit, or no law-suit?

Wright. Sir Patience said this when you made a reflection upon him. My lord, I hope you will not suffer me to be abused; for I never remember I was in any court upon any occasion of law before.

Serj. *Jeff.* Now I would ask you another question, Mr. Wright, because you have remembered more than other people have remembered; you have, by your profession, an extraordinary occasion to use your memory; do you take it upon your oath, that he did give any evidence positively?

Wright. I do not remember he used the word 'positively.'

Serj. *Jeff.* Did he swear any thing positively?

Wright. I do not know what you mean by 'positively.'

Serj. *Jeff.* Do you take it upon your oath that he did positively declare any thing in that trial? Methinks a man of your profession should understand that.

L. C. J. Did he speak 'positively,' or 'the best of his remembrance?' Do you not understand that word?

Serj. *Jeff.* Or directly, or categorically, or any word you use; I perceive you do not understand 'positive,' therefore I put another word.

Att. Gen. Did he swear any thing positively?

Wright. The most of his evidence that I heard, was with cautionary words, to the best of his remembrance.

Serj. *Jeff.* Do you remember he swore any thing positively?

Wright. I cannot remember, Sir, the whole trial.

Serj. *Jeff.* Did he swear any thing directly or positively?

Wright. Thus far he said, To the best of my remembrance, to the best of my knowledge, this discourse was over.

Serj. *Jeff.* Did he directly swear it?

Wright. My lord, he spake, cautionarily, those words he spake directly.

Att. Gen. Did he swear any thing indirectly?

Serj. *Jeff.* Where does my parson live? Where do you live, Mr. Wright? Upon your oath, where do you live, before you go?

Wright. If it be a material question, I will answer it.

Just. *Raymund.* You must do it.

Wright. My lord, I live in Essex, at Walthamstow.

Serj. *Jeff.* Are you the minister of the place?

Wright. Yes, Sir.

Serj. *Jeff.* He hath heard the word 'killing,' which nobody else heard before.

Mr. *Williams.* Pray call colonel Birch.

Mr. *Holt.* Come, col. Birch, will you come over on this side?

Mr. *Williams.* Thus, were you at the trial between his royal highness and Mr. Pilkington?

Col. *Birch.* I was. My lord, I am sworn to speak the truth, and the whole truth, and nothing but the truth. As for speaking nothing but the truth, I shall be sure to do; as to speak the whole truth, I cannot. My lord, I stood where those gentlemen do. Sometimes I could hear, sometimes I fell back, and could not hear, so that indeed I cannot speak to any one sentence as it was delivered. This is all I can say.

Mr. *Williams.* Then say what you can.

Mr. *Holt.* Colonel, please to go your own way.

Col. *Birch.* My lord, that which I took notice of was the caution that I observed sir Patience Ward to give his evidence with, that was the principal thing; I heard some pieces of other things, and then by-and-by I was put out of hearing. But methought it was something strange, because I have not usually heard the like, and therefore I charged my memory with it; that is, Some things he said to the best of his memory, other things as he remembered, or to the best of his knowledge; these were the things that I charged my memory withal, but to what sentence he applied, I am not able to give your lordship an account, upon my oath.

Mr. *Williams.* Colonel Birch, did you observe this in giving his evidence, generally: was it according to his remembrance, or cautiously?

Col. *Birch.* That was the main thing he spoke of; what he did in the general, was with caution.

Att. Gen. Can you judge of that by what you heard?

Col. *Birch.* I am very ancient, Mr. Attorney; but I can judge of a man's caution by his speaking.

Att. Gen. Colonel, did you see him strike his hand upon his breast?

Col. Birch. I do not remember. I cannot apply it to any sentence; but from henceforth I will never give evidence, but what I can do directly.

Mr. *Williams.* Mr. Northey, were you at the trial between his royal highness and Mr. Pilkington?

Northey. My lord, I was there, and stood behind there, but I could not hear very perfectly, to know any sentences fully.

Mr. *Williams.* What did you observe?

Northey. I do remember that sir Patience Ward did several times say, to the best of his memory, and to the best of his knowledge, one time particularly, sir George Jefferies did particularly say, that his invention was better than his memory.

Mr. *Thompson.* Was that towards the conclusion of his evidence?

Northey. He did it several times.

Mr. *Thompson.* But that time, Sir?

Northey. He did swear very cautiously, to the best of his remembrance; I cannot, my lord, say what he swore.

Serj. *Jeff.* You heard my question: when I said to him his invention was better than his memory, upon your oath, upon what occasion was it?

Northey. Really I cannot say, sir George, what; but your voice being much louder than other men's I heard you plainly.

Mr. *Holt.* Mr. Nelson, were you at the trial?

Nelson. My lord, I was present at the trial, and in some cases sir Patience Ward did rely upon his memory, for sir George told him, his invention was better than his memory.

Mr. *Williams.* Do you remember generally he did so?

Nelson. I had not remembered this, Mr. Williams, if it had not been for sir George Jefferies's reply.

Sir *Fr. Winn.* Mr. Baker, pray will you tell my lord what you know of sir Patience Ward's giving evidence?

Baker. My lord, according to the best of my remembrance, my lord chief justice Pemberton did say, sir Patience, sir Patience, you speak to the best of your memory, to the best of your remembrance; I say, my lord chief justice Pemberton did speak to sir Patience Ward, sir Patience, sir Patience, you speak to the best of your memory. My lord, says he, I do it to the best of my remembrance, my lord, all that I can say.

Mr. *Williams.* Can you remember the occasion of this, or the time?

Baker. My lord spoke to him once or twice; as I remember, he said once, mind your evidence, sir Patience; sir Patience was angry a little at somebody.

Mr. *Williams.* Can you say what was it?

Baker. Some words, as I remember, passed between sir George Jefferies and sir Patience.

Mr. *Williams.* And what was the occasion?

Baker. I cannot remember, indeed.

Mr. *Williams.* Did you observe upon the trial, that sir Patience Ward did swear generally positively, or to the best of his remembrance?

Baker. I apprehended him to swear to his hearing and memory sometimes.

Just. *Jones.* Do you remember the particular things he swore?—*Baker.* No, my lord.

Serj. *Jeff.* I would ask Mr. Blaney this: I know you exactly take notice of what he says; find out in your book, Sir Patience, sir Patience, you speak to your memory.

Mr. *Williams.* Mr. Bennet, pray can you remember what was sworn by sir Patience Ward?

Bennet. Sir, I was here, and I could hear very little; but then some time after, something towards the latter end, I got my head in, and could hear a little, and that was that Mr. Pilkington was not at the table, and the discourse was ended before he came, of waiting upon his royal highness, about going to his majesty, and after to St. James's.

Mr. *Williams.* How did he speak that, positively, or to his remembrance?

Bennet. He was asked both by you and sir George Jefferies. He did not answer you, but he answered sir George; for sir George asked him this question, Was this discourse quite over before Mr. Pilkington came in? He did declare—(I will tell you immediately, if you will give me leave) He did declare not one tittle was spoken, or to that purpose. It was the latter part, near it I am sure.

Sir *Fr. Winn.* How did he express himself in that?

Bennet. He declared, as I have told you, that not one syllable was spoken in his hearing.

Sir *Fr. Winn.* He says, my lord, that not one syllable was spoken in his hearing.

Serj. *Jeff.* The court hears what he says.

Sir *Fr. Winn.* Sir, that agrees with the notes of Mr. Blaney.

Serj. *Jeff.* The word that he said was, to the best of his memory. How was the word, sir Patience, sir Patience!

Blaney. That was not in, Sir.

Sir *Fr. Winn.* My lord, now we will go to another part of the evidence; we will call persons of quality, that have long known sir Patience Ward, that will give your lordship an account, whether he be a man likely to forswear himself corruptly and wilfully.—Sir William Russel, are you sworn? Pray how long have you known sir Patience Ward?

Sir *W. Russel.* Near upon 20 years.

Sir *Fr. Winn.* Pray will you give an account what you know of him?

Sir *W. Russel.* I have had several transactions with him for several sums of money, I never found but very fair, and honest, and reputable dealing. I have known him almost 20 years, I have dealt with him for several sums of money, and have found him very fair, just and reputable in all transactions between him and me.

Mr. *Williams.* Do you think he would wilfully or corruptly forswear himself?

Sir *W. Russel.* I never had that opinion of him: I was impannelled upon the jury, but the court refused me, and I went away.

Mr. *Williams.* Sir, did you observe him to be a man of truth in his trading?

Sir *W. Russel.* Ever, Sir.

Mr. *Williams.* Was he given to tell lies, or prevaricate?

Sir *W. Russel.* I always found him a man of truth and justice in his dealing, all the time I dealt with him.

Serj. *Jeff.* Sir William, I know you will speak the truth; you are a civil gentleman. Have you not taken him to be a factious seditious man? Did you look upon him to be a man well-affected to the king and government?

Sir *W. Russel.* I never did concern myself in those affairs much, I never had any converse with him about them.

Serj. *Jeff.* I know you were a common-council-man in his mayoralty.

Sir *W. Russel.* I was a common council-man in his time.

Att. Gen. Pray upon your oath, did you look upon him to be a man well affected to the government?

Sir *W. Russel.* I do not understand, Mr. Attorney, that I ought to pass my opinion upon persons in that point.

Att. Gen. Have you not observed in the city his actions there?

Sir *W. Russel.* I was concerned in that time when he was mayor.

Att. Gen. How did you observe him?

Sir *W. Russel.* I do not know that I have heard him speak in a court of aldermen.

Att. Gen. I ask you, Sir, would he strain a point to serve a party?

Sir *W. Russel.* I do not know, Sir.

Mr. *Williams.* I think you have known sir Patience a great while: Do you take him to be a good subject to the king, or no?

Sir *W. Russel.* I never knew otherwise by him.

Sir *Fr. Winn.* Mr. John Johnson.

Just. *Jones.* This kind of evidence doth weigh very little.

Recorder. It is a very improbable thing, that a man that hath borne so many great offices, that hath represented the king in that great office of lord mayor, should be guilty of this.

Att. Gen. My lord, if they talk of reputation at large, we will call all the court here for the reputation of our witnesses.

Just. *Jones.* For a man that hath been so eminent as sir Patience hath been, there is very little more to be said for his reputation.

Sir *Fr. Winn.* Mr. Johnson, do you know sir Patience Ward?—*Johnson.* Yes, Sir.

Sir *Fr. Winn.* How long, Mr. Johnson, have you known him?

Johnson. Ten or twelve years, Sir.

Sir *Fr. Winn.* Have you had dealing with him?

Johnson. Yes, Sir, for considerable sums, for thousands of pounds.

Sir *Fr. Winn.* Has he dealt with you as a just man?

Johnson. A very honest just man as ever I dealt with in my life.

Sir *Fr. Winn.* Do you think he would forswear himself?

Johnson. I don't think he would tell a lie.

Att. Gen. No, not for a party?

Johnson. No, not for a party. Said I, sir Patience Ward, you are looked upon to be a person disaffected to the government. Says he, It is my misfortune; I am as loyal as any man in England.

Just. *Withins.* Hark you, Sir, pray how came you to question whether he was or no?

Johnson. Being intimate with him, Sir.

Just. *Withins.* What made you doubt, to ask the question?

Mr. *Pollexfen.* Do you apprehend him to be a man that would forswear himself?

Johnson. No, truly, he was a man of few words.

Mr. *Pollexfen.* Was he cautious?

Johnson. Yes, Sir, as exact a man as ever I dealt with in my life.—I am very well known in the court, I don't come to serve a party. I can serve his majesty as well as some in court.

Sir *Fr. Winn.* Mr. Toriano, how long have you known Sir Patience Ward?

Mr. *Toriano.* Thirty years.

Sir *Fr. Winn.* In all the time have you looked upon him as fair in his dealing?

Toriano. I have known him a man of truth, one that would not be false, to his knowledge.

Sir *Fr. Winn.* Do you think he would forswear himself?

Toriano. I don't think he would tell a lie to his knowledge.

Serj. *Jeff.* You say how long you have known sir Patience Ward: Have you not wondered within 3 or 4 years?

Toriano. I have not meddled with things. He hath by his discourse been as loyal as man as any.

Mr. *Williams.* Mr. Pickering, how long have you been acquainted with sir Patience Ward?

Pickering. My lord, I have been acquainted near 40 years. We have dealt together as long as he did follow a trade.

Mr. *Williams.* Pray, in your conversation and dealing with him, did you observe him a man given to lying, or falseness, or deceitfulness, in his conversation and dealing?

Pickering. I never in all my life did observe him guilty of any thing inclining that way, but of a fair conversation, never given to many words.

Mr. *Williams.* Do you think he would corruptly forswear himself upon any account?

Pickering. Truly I believe not willingly do it, nor any thing that way.

Att. Gen. Mr. Pickering, you have observed him to be swerving of late?

Pickering. Truly I have been a common council-man in the ward where he is alderman, and all the discourse I heard from him was very loyal truly.

Serj. *Jeff.* By his actions you have looked upon him to be a man very well affected to the government?

Sir *Geo. Treby.* (To Capt. Griffith.) Do you know sir Patience Ward?

Capt. *Griffith.* I have known him ever since he hath been alderman of that ward.

Sir *G. Treby.* How many years, sir?

Capt. *Griffith.* About thirteen or fourteen years.

Sir *G. Treby.* In all that time how have you looked upon him?

Capt. *Griffith.* I have looked upon him in that repute he was in as an alderman. I never had any dealing with him.

Sir *G. Treby.* Did you think he would forswear himself?

Capt. *Griffith.* No truly, I think no man of honour would forswear himself.

Att. Gen. Captain Griffith, upon your oath, how hath he carried himself towards the government?

Mr. *Williams.* Sir Harry Tulse, in all your time did you find him to be a man given to tell stories for truth?

Sir *H. Tulse.* Sir, I never had any dealing with him in matter of trade.

Mr. *Williams.* How did you find him in his conversation.

Sir *H. Tulse.* Truly, Sir, I never heard any thing ill of him.

Mr. *Williams.* Do you find him a man of falsity or truth in his conversation?

Sir *H. Tulse.* I never had any dealing, so can speak little; I never heard any thing amiss of him; I have heard he is a very considerable merchant, and I believe he is so, and accounted a very civil gentleman. I have had the honour to sit in the court of aldermen ten years with him, and we have had sometimes some difference in judgment.

Sir *Geo. Treby.* Would he wilfully forswear himself, do you think?

Sir *H. Tulse.* Truly, I believe not.

Serj. *Jeff.* Do you believe every thing he swore at the last trial was true? You are upon your oath, sir Harry Tulse.

Sir *H. Tulse.* I believe they were not true.

Serj. *Jeff.* Sir William Hooker, we would give you no more trouble.

Mr. *Williams.* Because they called you, Sir William, I would ask you a question, what do you think of sir Patience Ward?

Sir *W. Hooker.* Truly thus, according as it hath been said; but truly when I consider what a condition sir Patience Ward was in, when he delivered his evidence; for to my remembrance, he looked like a man three quarters dead—

Serj. *Jeff.* Do you believe whatever he swore was true?

Sir *W. Hooker.* I do not remember any thing he swore then.

Just. *Jones.* Have you done?

Mr. *Williams.* We have done, we leave it to the court.

Serj. *Jeff.* Sir Francis Lee—Sir Francis, were you at this trial, and do you remember what sir Patience Ward said at the trial?

Sir *F. Winn.* Always you come with drops at last.

Mr. *Williams.* This is a new way of going to work.

Sir *Fra. Lee.* I was upon the jury between his royal highness and Mr. Pilkington, and sir Patience did swear, that Mr. Pilkington was not in the room, when the discourse concerning the duke of York was mentioned; but afterwards did swear, when Mr. Pilkington said, he hath burnt the city, said he, I clapped my hand upon his mouth, and the other upon his breast, and bid him explain himself; who do you mean, Hubert? Sir Francis Butler, who was our foreman, and stood next to me, jogged me, and bid me take notice of that, and so I did: and after we had this discourse together, he said, sir Francis, I would have had you to take notice: did you take notice of it? I told him I did. Truly it seemed clear to me, That he should swear he was not present at the discourse about the duke of York, and afterwards he must infer he meant the duke of York; or else, what should he have stopped his mouth for?

Mr. *Williams.* My lord, here are gentlemen that heard all the trial, they might have been called certainly in order. But, my lord, to come in at last, when the thing is heard on both sides then to come in with witnesses again, I do not understand.

L. C. J. They may call theirs, when you have done with yours.

Sir *F. Winn.* My lord, I will but put this one instance; in a civil cause it hath been denied, much more in perjury.

Mr. *Williams.* We will leave it to the court; if Mr. Attorney says he will, we will.

Just. *Withins.* Take your liberty on both sides, I pray.

Att. Gen. If sir Patience did not know it to be false, then it is no perjury.

Sir *Geo. Treby.* I said no such words.

Just. *Withins.* They resolve they will conclude; therefore, gentlemen, take your time.

Att. Gen. I remember what you proposed the other day, you made a speech after two or three o'clock in the afternoon.

Sir *Geo. Treby.* Who, did I?

Just. *Withins.* Nay, good gentlemen, do not quarrel.

Sir *Geo. Treby.* I desire to say a word or two. That your evidence doth not at all encounter ours, it stands with it; let them have as much reputation as they will. They say, sir Patience Ward did say thus and thus, as concerning cutting of throats, and as concerning the discourse being ended, and as concerning the duke's being not named; ours say the same too: but they say more; they say, he said with all the caution in the world, from the beginning to the end. My lord chief justice

bids him recollect himself; he says, he speaks to his memory. Upon sir George Jefferies's question, he says, he speaks to the best of his remembrance, and thereupon is that memorable reply of sir George, your invention is better than your memory. One of their own witnesses says it was so, and so says Mr. Blaney, and so says another witness. While the discourse continued, whether he was there or no, sir Harry Tulse doth agree, that he cannot say he did see him. Now, under favour if he did not see him, he might say he was not there, for no man can swear otherwise than according to his senses; what a man does not see, may be behind his back, although he had not limited himself with that caution, as he did limit himself with the greatest caution, and said, as he did believe, he was not there. My lord, none of their witnesses will undertake to say he used the word positive: they don't deny the thing, it is impossible any man should; but that there were these words of limitation, they might be said, and not heard by them, they might be said, and not observed by them. None of them did pretend to write notes, except the first; and from the evidence of the first, I have all the reason in the world to believe, that his notes did contain all those cautions, and all those qualifications, that we speak of; why else should he be to seek to that written short-hand? He did not know whether he had notes here; he did know, whether he had consulted the notes since. Would any man in the world lay by notes at this rate, that intended to give full evidence? Though I will say that for him, he does not undertake to say positively, but according to the best of his memory, and according to his belief. Sir William Hooker says, he was in a great confusion. Here are a great many gentlemen beyond all exception in the world, that do say his dealing was so fair, that he never told a lie, that he was most exact and most just in his dealing. It is impossible that a man should avoid such an evil as this is, for so long a time, and in so great places and offices, and should now at last be guilty of such a vile and base sort of crime as perjury is, which no man ought to presume of another, unless there be the greatest and plainest proof to the contrary. But, my lord, on our side is the plainest proof that can be, by witnesses that remember the words as well as the qualifications; and one of our witnesses is worth abundance of their witnesses that did not write, especially such a one as does not shew his notes. But as I said before, they were testified by sir Patience Ward, with all those cautions; and we do think, that there is no colour in the world that this should be perjury.

Mr. *Williams.* Gentlemen, I am of counsel for the defendant, and the question is, gentlemen, Whether sir Patience Ward be guilty of the wilful and malicious perjury that is laid to his charge in this information? Gentlemen, it is agreed on all hands, and that will appear to you, there hath been no manner of evidence given for the king against sir Patience Ward, either as to his honour, or reputation, or truth: there is nothing, gentlemen, endeavoured to be charged upon him, but this particular crime. The gentlemen that prosecute him do not offer any one thing against his reputation or his dealing; so that, gentlemen, for aught appears to you yet, before this was laid to his charge, he was a very clear man. Gentlemen, he hath borne great offices in the city of London; he hath been lord mayor of London; he is now in a considerable place of magistracy; he is an alderman. We have proved by several gentlemen, he is a man of great value, a man of great reckoning and dealing, a man of truth, a man of veracity, a man, that they believe, would not forswear himself for a world: gentlemen, the very witnesses against us, they say it. Sir William Hooker tells you, he was under that consternation, he was like a man three parts dead, so that there could be nothing of malice in that man; he was without sense, without passion; and if any thing was done, it was done as it were by a dead man, a man that was senseless. Sir Harry Tulse believes, he would not willingly have perjured himself; then he is not guilty of wilful perjury, and that is the question you are to try. Now I have said this, gentlemen, as to the condition of the person. And now for the imputations that are laid upon him. The second observation that I make, is from the nature of the crime; we are accused of perjury, first, that we have perjured ourselves. That in any one casual thing done upon any account whatsoever, to prove the fact done, that a man is perjured, it is an easy matter. Men are subject to mistake; the words spoken, gentlemen, were spoken in a very few moments. Consider what a thing the memory of man is, how subject men are to mistake words. To say, that men shall not differ, that there shall be no variation between man and man, it is to put an end to all conversation, there would be no bringing of witnesses, if there might be no variation. Nay, gentlemen, to justify what I have observed to you, observe these two gentlemen: sir H. Tulse, he tells you, that the words were by way of question, Is the duke come? That Pilkington should speak the words by way of question, Is the duke come? Is he come to cut our throats? So that he tells you, Pilkington said these words by way of interrogation. This is the evidence of sir Harry Tulse; and both of them agree, gentlemen, that they were spoken at one time. What says sir William Hooker? How does he apprehend these words? He tells you they were positive in the present tense: He is come, he is come to destroy our wives and children. So that if these gentlemen mistake, one takes them by way of question; the other says, they were delivered positively, in the present tense. Suppose this were brought against these persons, no man will say this is perjury. As these gentlemen have misremembered, so might sir Patience Ward have misremembered; and if

he had, it is his infirmity, no crime: for any man is subject to mistake. We are now upon the perjury, and it is not any thing that is affirmative, but they are negatives. The first negative is this, that he should say there was no mention of cutting of throats. Say? The question is, what was the discourse about cutting of throats? Say I there was no discourse about cutting of throats; it is natural to a man to say, I heard no such thing, and every man must speak to his hearing; it is that which must pierce your ears; that organ must be touched. There was no discourse, I heard no discourse; I could say no otherwise, nor any man that goes by common reason. It must be by hearing, it is not natural: won't you believe what they say, that sir Patience Ward did say, and Mr. Blaney, and other witnesses with him, there was no such discourse? Is it not rational for a man to believe there was no such discourse? So that, I take it, was the nature of the thing. For the other thing, there is not one man that hath proved it to you, that he said there was no discourse of cutting of throats. Let them shew me that witness that he did positively say it, and then I will give up the cause, for my share. I am sure Mr. Aston, a clerk in the court, he says it was, to the best of his observation. Mr. Aston is a man that uses to be here, and a vigilant man in the court; he does not take it upon him positively. These worthy gentlemen, the aldermen, don't take upon them positively. Their witnesses were wary in it. Are there any two of them agree how the words were spoken? So that, gentlemen, there is no positive proof against us. Now the proof lies on our part. We prove very plainly by Mr. Blaney; and can any man do better in this case? The same evidence runs to the other two instances, as to this; therefore I do not love to multiply words. Now our evidence is to justify this. Here is Mr. Blaney, he sat in a most proper place, and the most likely to hear of any man in the court; he sat in the middle, between the court and the jury, near the witnesses, heard as much as any about the court. He tells you directly, he did refer his evidence to his hearing; he tells you, he referred all the parts of it either to his memory or his observation. He does not trust to a frail memory; but he tells you he took it in writing, and tells you that writing is here; he produces it here. He is a gentleman that uses to take writing; so that if you give credit to this gentleman, certainly he is in the right. Mr. Blaney is not alone in this matter; we have called several, and they agree with Mr. Blaney. Every witness that speaks justifies Mr. Blaney. So that we have so many witnesses that justify every thing, or most of the things that we have said. Now, gentlemen, when I have said all this to you, consider; for there are some things remarkable in all causes, and the truth is, all the witnesses give you one remarkable instance, and that is, of sir Geo. Jefferies, that he made a comment upon the word memory; he admired his invention, but lessened his memory, as if the gentleman had been troubled, that he had not remembered; for I remember it was a reflection upon his memory, that his memory was not better; but commended his invention mightily. So that this, gentlemen, is a remarkable thing. They give you that instance to justify what was said by Mr. Blaney. Now, gentlemen, I have said all this to you, we must rely upon these things. They ask, whether any thing that was said, was positive? It was a trial lasted some hours; and I think sir Patience Ward was an hour in examining. Did he say any word positively? Can any man answer such a question? It is an impertinent question. Gentlemen, upon those three matters that are assigned, whereof he was accused; as for those three things, they are answered particularly. Gentlemen, now we are in your hands, and the question is, what you will do in our case? Here is a positive proof for us; all the presumptions that can be for us; here is the proof of our reputation; here is nothing against the gentleman's reputation; and a man of honour had rather be tried for his head, than for his ears. I know, gentlemen, you are men of value, men that value your own reputation; I leave it to you, whether you can in conscience say, upon your oaths, that this gentleman is guilty of wilful perjury.

Sir *Fr. Winnington.* My lord, this is a cause of great importance, not only now, but in point of example hereafter. My lord, the information is, that sir Patience Ward, by his consent, and out of a wicked mind, did falsely, voluntarily, and corruptly swear so and so: so that if so be that he hath not sworn wilfully and corruptly, I know your lordship and the court will tell the jury, he is not guilty of perjury. Truly, my lord, in this case, I must observe to your lordship and the jury, that we are now contending what witnesses have the best memory; for the thing is not in controversy for any act done, but our defence is, what sir Patience Ward did swear at the time when he was at the trial. I must say, there are no memorials in this cause given on the other side, of any man that did undertake to write down at that instant time for the king; but one man says, he cannot very well tell whether he took notes or no. So that I do say, my lord, with your lordship's leave, that of all the witnesses they have produced, there is not any one of them but does vary in words; they are not consistent in expression, even to any particular questions that were asked; and can it be said to be wilful and corrupt perjury, upon such an uncertain evidence? I don't doubt, gentlemen, but you will take great care of it. My lord, I will mention but two particulars to your lordship, that I think, go through the case. My lord, Mr. Blaney hath told you several particulars that have been remembered; he writ it at that time, without any variation; it hath a great advantage over the other side, that have only retained it in their memories, and their memories might fail them, and differ

from the time of speaking; but here the writing remains, that was writ at that very instant; here it was fresh written out of his mouth. The question was asked, can you swear, Mr. Blaney, you writ every word, or no? It was asked the witnesses, can you swear, that he swore nothing positively? I must confess, my lord, it is a question that is strange for a man to answer. Any thing positive! Does he know what a man means? He must reduce it to particulars. But, my lord, I have asked Mr. Blaney, did you take it as it came from his mouth? He swears these words he spake, and there is no variation, but written instantly at that very time. My lord, I do think this is a thing goes a great way. My lord, there is one thing more that I think goes through the cause, and that is Mr. Crisp; for Crisp acquaints your lordship, that when there was some variation between the assertion of sir Harry Tulse and sir Patience Ward, my lord chief justice gave an admonition to sir Patience Ward, Sir Patience, Sir Patience, recollect yourself. My lord, saith he, what I deliver, I do according to the best of my remembrance; and then this afterwards (for this was at the end of his evidence) is a qualification quite through the cause. This being to weigh with the other side. But I would say one thing more; to what end should this be? Is any man damnified by this oath? Is there any man can say this oath hath prejudiced any man in his reputation or estate? It was very strange, that a man that hath brought so many witnesses, and those very worthy persons, that say they believe he would not forswear himself, should do this for nothing, that a man should be the wickedest man in the world at one jump, that you can hear nothing of any act of falsity of him before. Now when there are such plain evidences, undubitable evidences, it is a thing of great consequence. And colonel Birch says, generally, as he does remember and believe, he did cautiously speak. And sir William Hooker says, he was under consternation at this time. So that it appears he had much caution; and if so, it is of mighty consequence, and concerns any witnesses to come. Here is a man perjured, and a great many witnesses may. You are not to mind what is said by the counsel of both sides, but what is said in point of proof It will make all men cautious, because they may suffer danger by a positive assertion. My lord, this is a case of perjury, in which I, and every honest man, that values his reputation, should be tender. If this man be guilty, it is a great crime; I must leave it to your consciences.

Mr. *Pollexfen*. The nature of the case I do humbly pray your lordship to take into consideration, and the jury. It must be wilful and corrupt; for so are the words in this information, and in all indictments: It must be wilful and corrupt perjury. My lord, if so be that several witnesses interfering one with another, one remembering one parcel of words that were spoken at the same time, any man should be perjured in this case, by remembering, and not remembering, no man almost durst be a witness. What discourse hath passed, let us but observe in this matter. Here were three aldermen present; one of them swears there was no discourse of cutting of throats; it is a negative, not an affirmation; and no man that hears him, but must say of it, no discourse that he heard. When I say there was no discourse of such a thing, any man will understand, no such discourse came to my observation or hearing. For the others that say there was such discourse, they vary themselves; one says it was cutting our throats; t'other, cutting the throats of our wives and children. I only say this to shew the weakness and fallibility of men's memories, that carry things so in an uncertainty. Two or three men swear a man said so, t'other says he did not; no man can understand it in any other sense, but he did not hear him say so. For a man can say no more of what another says, than what he heard. So, my lord, considering the circumstances of the case, it is so that men may perjure one another upon omissions. One man may bring one little part of a discourse, and another another; it will be a very unsafe thing for a man to be a witness so. But my lord, the next thing is this of positive evidence, and upon remembrance. My lord, if so be there must be positive evidence to convict a man of perjury, I would leave it to your lordship in the cause, whether there be any among all their witnesses, have proved it positively? Next, my lord, if so be that we must have of t'other side positive evidence, we have more positive evidence than they, under favour, considering that Mr. Blaney hath his notes. This I answer to that objection of theirs, Did he say any thing positive? Did you write down this or that? That is not the matter; there is no man that writes all: But the question is of that he did write, Whether that be true? If that that be true, it is more certain, being written at that time, being written here in court, when there was no thought of being made use of as an evidence, is stronger than many men's slippery memories. But he in this is backed with a great many other witnesses that do speak it, though not so positively as he does, because he hath his notes to help him; and he says particularly to one thing, that he does particularly remember it. And, so, being they were written at that time, that is, under favour, a better evidence than twenty slippery men's evidence can be. So that taking all this together, considering the person accused, and the great offices he hath borne, considering the great shame and scandal of the crime, all men that have known him for 20 years together, saying he was not any false man; better a man had taken his head from him, than taken away his reputation. Unless, my lord, there be plain and full evidence, I hope it will not affect us, nor witnesses that shall come afterwards.

Attorney General The matter, gentlemen,

before you, is, Whether or no sir Patience Ward, for swearing these words, be guilty of wilful or corrupt perjury? I shall admit that; but it is the first time I ever heard of, that we must go to prove the intentions of this gentleman, that if he did not intend to swear wilfully, or voluntarily false, that it will not be a corrupt or wilful perjury. My lord, therefore I must observe this to the jury; if the matter that he swears be false, the law construes it to be corrupt and wilful: If the matter, I say, does directly come in issue, and be in that issue swears that which is false, so that it hath an influence upon that issue, the law construes it corrupt and wilful: For that is the reason, my lord, why that regard is given to all oaths in causes, that they may be plain and direct; and a great punishment is upon them, if they are not true; that is the only reason for it, and no other. For without doubt, we have nothing to prove the case, but these two things; for we cannot search into a man's intentions, that when he speaks of the duke of York, he intends Hubert; but we must take things as they are, whatever a man intends. So the jury are to inquire but of two things; Whether or no these words were spoken by him, as they are laid? The next is, Whether they are false? We have nothing more to do: But if we prove these two things, that the words that were spoken, were spoken by him as they are laid, in that manner, not as these other witnesses would have, with the words, 'I believe,' and, 'as 'I remember,' but that they were plainly and positively spoken, my lord, that we are to prove, and we have proved it. The next thing we are to prove, is, that the words are false; that they are false, they do admit by all the witnesses; they don't go about to encounter that proof at all; they have not at all endeavoured it, but that these words, as they are laid, are absolutely false; and they were contrary to the matter that was in issue in that case. That this gentleman spake them, my lord, the very thing speaks; for he was heard by the court as a witness, and as their evidence in the whole cause; and the court, after he was examined, put it upon this gentleman, What do you swear? If it had been all, as 'I remember,' and, 'as I believe,' the court would have declared it was no evidence. My lord, if a matter be in issue, and a man comes and says, 'as I 'remember, and believe,' this doth not encounter the issue, nor the proof that is for that issue, when there were two positive witnesses, that positively swore the words, that the court should then refer it upon the testimony of sir Patience Ward to the jury, the court would give judgment he was no evidence; it is plain he was no evidence, if he swore to his memory and belief. That that is no evidence, the reason is plain; for there would be an end of all trials, if ever that sort of doctrine be admitted: No man can be perjured upon his remembrance, nor upon his belief; who can tell he believes contrary to what he says? So that there is an end of that which ought to be the cure of all the false witnesses in England; for I take it in point of law, 'the best of remembrance' in this nature, or 'as I believe,' is no evidence at all; and therefore the insisting much upon that, is to charge the court with injustice to put that upon the jury, and the jury need not have given any reason why they would not believe him; for there had been an end, if he had said, 'as I remember,' the jury might have said presently, there are two positive witnesses against him. The two first witnesses we have called, Hatch and Wood; they do swear as to those words of cutting of throats; they swear it positively, both of them. Whether he use the word 'positively,' or whether it was 'upon his oath,' that, indeed, they could not speak to, but they were positive, without any reference to his belief or his memory. To the other point of the duke of York and Pilkington being there, that they speak positively to, and I think sir James Smith doth speak as positively that he was sure his words were, either 'I do positively say,' or 'upon my oath, one of them; but without any words of reference. Mr. Aston, who is a clerk of this court, and sat there in this place, he speaks to that positively.

Sir *F. Winnington.* 'I think' I am 'pretty 'sure' 'I think,' these are the words.

Att. Gen. The Foreman of the jury he repeats the same positively, and gives a plain reason; if it were not positive, it were an idle thing.

Mr. *Williams.* Will you do us injury in the cause?

Mr. *Aston.* If he spake any words of mitigation, they were so low, I could not hear; and I think I could hear them all.

Just. *Withins.* Pray go on.

Att. Gen. I say, my lord, several witnesses we produced, and sir William Hooker particularly; for we had never made use of him, if there had been only so idle an evidence, for we did not call sir William Hooker till after his evidence was given, to encounter this positive evidence. We then produced sir William Hooker, after he had given positive evidence, and sir William Hooker did swear it positively upon him again; then the court asked him, what do you swear? My lord, after this, he might be shy in his evidence, and say, 'I re'member, and I believe.' After this, we put it upon him again, and then we say the words were sworn positively; for by way of hear-say and belief is no evidence. Now Mr. Blaney is all in all, and I think now Mr. Blaney will signify nothing. I say, my lord, Mr. Blaney, what is his evidence? He pulls out his notes, and there he tells you, to such a question there was such an answer, and there indeed it is 'to the 'best of his remembrance.' But what does Mr. Blaney tell you? Mr. Blaney positively tells you, that these are but short notes, many things omitted, and I perceive whole sentences omitted, a great deal of discourse omitted; and that appears by that passage of sir George Jefferies's interrogation. Then, my lord, in one place he

comes and says, 'to the best of my remembrance' afterwards he is pressed; for surely it was to no purpose we would let such an evidence pass, but when he is pressed; Mr. Alderman, is it so or no? For belief is no evidence. There, my lord, he answers positively, and that is omitted out of Mr. Blaney's book: This was necessary, my lord, we should do, and not let such a thing pass, as that 'to the best of my remembrance.' My lord, then to see what Mr. Blaney himself says, he took notes, he did not answer one thing positively throughout the whole; for which he is to be rejected, I think, as no witness in the case, as a person that comes and swears by hearsay; and it was so remarkable a thing, my lord, that we who are of the king's counsel, should take notice of it to the court. He is no witness, he swears nothing positively: It is an art, my lord, was never invented till of late, and if it be allowed, it will make an end of all trials; for you will have as much forswearing, as you have lying. Here is one gives evidence he never told a lie in his life, and I care not whether the jury believe that or no. Surely my lord, we should not let a man go away with such an answer as this, 'to his remembrance.' If they take upon them this way of swearing, I tell you plainly they are no witnesses at all. My lord, I must appeal to the court, if such a thing be allowed, what will become of all trials? The punishment of perjuries does make men cautious in swearing; and so it was from the beginning, ever since swearing was allowed to decide causes, perjury was to be punished. By the law of God it was severely punished. If there be a new way introduced of giving evidence, 'to 'the best of my remembrance,' you have shut out the punishment. Can you convict any man of all their witnesses, when none of them swear. Colonel Birch and others, they come and say to some things, there were these qualifying words; if it had been to material things, my lord, were we so senseless, or the court so senseless, to let 'the best of my remembrance' pass for evidence. So that, my lord, they do not tell you plainly, they speak nothing at all express. When they are asked, can you swear that he added these words, 'to the best of my remembrance?' they say he did to some things, but are not positive to what. So that your lordship sees we have plain testimony, they have no proof. So you see what sort of evidence this is. Now, my lord, for his crime. He hath been a fair dealer, surely in the world, or else he could never have gained such an estate; but when men are engaged in parties, we see what a man will do for a party, and to help a sickly brother, that was falling into the pit, over the hedge. But I say, my lord, it is impossible, that their evidence should encounter ours. And, indeed, if we had had notice, that this would have been given as material evidence, truly we could have given a great deal to shew the many blots in this gentleman; but, my lord, I say this is not material of what reputation a man hath been, but whether or no he spake these words in this manner; and whether they are false; that they are false is granted, and that he spake them as they are laid, that we have proved.

Solicitor General. The questions that we were to prove were, whether sir Patience Ward did give his evidence at the trial between the duke of York and Pilkington? Whether or no he did swear positively, that Pilkington did not come in till the discourse concerning the duke of York was over? Whether he did swear positively, that there was no mention made of cutting of throats? Sir Patience Ward, we say, did take upon him to swear this before positively, and not with that restriction that they would have passed upon them. We called two witnesses, and they are both very positive in it; for they swear, that sir Patience Ward did swear, That all the discourse concerning the duke of York was over before Mr. Pilkington came in; that they swear positively, that he did it positively; both of them do swear, that sir Patience Ward did take it upon his oath, and to the manner of it, positively; though he did not use the word positively, yet they swear them without any such restriction. These are the two witnesses, Hatch and Wood. Then there is sir Fra. Butler hath given you an account of his evidence, and they did debate it among themselves, and give you the reason why they did not believe sir Patience Ward. Now, first, they encounter us with the evidence of Mr. Blaney, and his notes must be the measure of the truth of his case, and nothing must be taken for true but what he hath writ; he tells you at the same time he had not writ all. Mr. Attorney made a full observation upon that: suppose he did say he did not hear any mention of cutting of throats, or did say 'to the 'best of his remembrance,' yet surely that doth not contradict our witnesses, that take upon them to swear positively, that he swore it without any such restriction; and it is reasonable to believe he might be pressed to say something to the questions that were asked, for if he said he did hear it, it had been an immaterial evidence. Sir Fra. Butler doth take upon him to say, that he did say it without restriction; and their considering the weight of it to reject it as untrue, doth make good what our witnesses have said that he did swear it without any restriction. But after all this, they say he cannot be found guilty, for this might not be wilful and corrupt perjury; nay, they go so far, that they are setting up a doctrine, that I dare say no man shall be guilty of perjury for any words he shall swear wilfully and corruptly. If a man is conscious to himself, that the truth is otherwise, or if he be uncertain whether it be so or no, yet if he take upon him to swear it, that is wilful perjury in him, for he did not know it to be as he did affirm. Now, my lord, I shall offer but one circumstance more: consider how this discourse did rise; it was upon a debate concerning waiting upon his royal highness, upon his return, they were all present in the gallery at Guildhall; and it is reasonable to be presumed, that every one must hear the whole discourse——And sir Patience Ward, by the

action he did in this case, must be presumed to hear every particular of it. When Mr. Pilkington came to these words, 'He hath burnt the city, and is come to cut our throats, sir Patience Ward catches him, and stops him immediately upon his saying this. Now he that was so near him as to lay hands upon him, surely it cannot be presumed but he must hear what he said, and he checked him for what he said, and would fain have fetched him off by an invention that serves to little purpose; but did verify this, that he had spoken words of the duke of York, and therefore did administer an excuse to him; therefore I say it cannot be presumed but that he must hear it. But however, if he took upon him to swear a thing positively, that he was not certain of, it will be wilful and corrupt perjury in him. But, they say, though he should say it positively, it must be understood he did not hear it; that he swears there was no such discourse as he did hear. At this rate, my lord, no man will be found guilty of perjury, but there will be all the mischief in the world introduced; for a man that swears to the best of his remembrance, there will be no danger of that man's being indicted of perjury, that is no evidence. But a man that will take upon him to swear positively there was no such discourse, he is an evidence, and a material evidence in the case. Suppose, my lord, there were witnesses concerning the publication of a man's last will, that there were two witnesses did sit upon the sick man's bed, one swears he did hear him publish it in that form, and that this was his last will and testament; the other comes and says positively, he said no such words; certainly this is a very material evidence. Shall that man come off from a conviction of perjury in this case, by saying he did not hear? What a dangerous case are all men's inheritances in at that rate? My lord, I will not trouble your lordship, only there is one observation they have made, which I cannot let pass, that there is no damage in the case. If a man should forge a deed, and the jury detect this forgery, there is no great damage, shall the man be accused, because he is discovered? Shall no perjury be punished, but what is successful?

Sir *Geo. Jefferies.* I should not have troubled you in this cause, but that Mr. Solicitor was called into another court. My lord, I shall not offer any thing in this cause, nor repeat any thing that hath been said. My lord, I shall say of this cause, what the gentlemen of the other side said; it is a cause of very great consequence, and it is a cause of that consequence, that I know it hath a very great impression upon your lordship, and likewise upon the jury; and they are not now come to try whether or no sir Patience Ward did deal very fairly betwen man and man in a matter of money, but whether or no sir Patience Ward did swear what we have alledged in the information he did swear, and what he did swear was true: and for that matter, my lord, I must needs agree with them; nay, I cannot believe the gentlemen of the jury will take any thing to be evidence that is said by us that are counsel at the bar, but only so far forth as they have evidence proved to them in court; for in case we were to guide juries, I confess Mr. Pollexfen hath determined it, by saying the jury's verdict must be false, if they find against sir Patience Ward; which I think is a pretty strange inference, and one of the sharpest inferences for such a way of reasoning, that I confess my poor sense won't reach it. In the next place, I say, the gentlemen of the jury ought not to take any consideration in this of his reputation, notwithstanding all his dealings before this cause; for certainly till such time as sir Patience Ward came to be called upon his oath, any man of conscience and justice, and common charity, had he been asked the question, he must have said he did not believe, that sir Patience Ward would wilfully forswear himself. God forbid any man should have such a thought of me, if he were a man of less quality than sir Patience Ward! But I must conclude, that after sir Harry Tulse was of that opinion, so I must conclude with sir Harry Tulse, if in our case he be to be believed, at that time he did believe he did forswear himself.———Pray, good Sir, give me leave, I will not, to the best of my remembrance, do you any thing of injustice, My lord, I do say, in this case, that though he hath been lord mayor of London, and borne the office of sheriff, and though he is now an alderman, yet, I do say, persons that have borne these great offices, have been guilty of greater crimes, that is, crimes that have greater punishments, than this gentleman is now accused of; I mean that of rebellion, and all that mankind can be capable of: so that it is not the dignity of place excuses men from offence. But certainly upon his evidence, sir Patience Ward ought to be believed by the jury guilty of wilful perjury, rather than three or four aldermen that swore against him. Gentlemen, the next thing is, the observation of Mr. Williams, of the variance and difference of expression between these two worthy aldermen, sir Harry Tulse, and sir William Hooker; one comes and says as though it were positive, the other as though it were a question. If it can be expressed, my lord, either one way or the other, or both, he would be guilty of perjury; for your lordship remembers the record mentioned in this record, and all the words that were swore by sir Harry Tulse, were part of the action that Pilkington was charged with; all the words sir William Hooker swore, were likewise words put in the record; so that both of them were material to the issue. Now what comes sir Patience Ward to do? Does sir Patience Ward come and testify it to make a difference between these two gentlemen? You see both of them agree there was a talk of cutting of throats. Says sir Harry Tulse, Is he now come to cut our throats? Says sir Willliam Hooker, Is he now come to cut the throats of our wives and children? What says sir Pa-

tience Ward as a third man? He says there was no such discourse of cutting of throats, that is the thing these gentlemen have a mind to forget; one says he is come to burn the city. Is he come to burn the city, says the other? That is not the main question; these are little minute differences. It is the prudence of mankind to take all words in their affirmations, rather than to make contradictious between them. In this case he finds there was a necessity to serve a turn, and he comes positively, and says, all the discourse about the duke of York was ended before such time as Pilkington came in; and there is an end of all, in case he swears true; for in this oath he absolutely contradicts what both these gentlemen swore; for this is not such a little variance as these gentlemen would have you to believe. But, gentlemen, I shall apply myself to the evidence they have offered, which is designed to overthrow ours. The first is, Mr. Blaney, and there is a great value put upon Mr. Blaney; he sat in a convenient place, just in the middle, and there he took notes, and believes he did not alter them. Now I appeal to your lordship, and the court, I appeal to the jury, whether or no their own witnesses did not hear sir Patience Ward say, he had never been in a trial; he never took notice of a word of that. And another man (Mr. Baker) says, that my lord chief justice said, sir Patience, sir Patience, have a care; you speak according to the best of your remembrance. Now, my lord, Mr. Blaney takes not the least notice of that in his short notes. The question was asked Mr. Blaney, can you take, upon your oath, that he swore any thing positively, or that he did not? Truly, I can't tell; not in my hearing, are his words. Next comes Beaver; his word was, In my hearing. It was Mr. Blaney's short-hand remarks that Mr. Beaver prefaces all his discourse with, to the best of my remembrance. They have called witnesses that could not be positive. I appeal to your lordship, and the memory of the jury, whether ever any one of them was able to say, that the words, 'to the 'best of my remembrance,' were annexed to this, or that, or the other sentence. But, my lord, on the other side, I must say, that there are here aldermen that have sat upon the bench, and have behaved themselves with loyalty and integrity to the king and government; these very aldermen here do positively say, sir James Smith, sir John Peake, sir William Rawsterne; it is true he cannot be positive as to the business concerning cutting of throats; but as to the first, does not sir James Smith particularly say, I cannot say whether he did say positively or whether he did say, upon my oath; but he did undertake to say, that either the one or the other he was positive in, that he was very express that the duke of York was not named after Pilkington came in. And for the saying, that Blaney took notes at that very time, therefore Mr. Blaney must be a man of ten thousand, as they call him; he is worth ten thousand witnesses, because he took short-hand notes? I would have you consider what sir Francis Butler says, that was foreman of the jury at that time, that bid sir Francis Lee take notice of it at that time; he did it positively: he says, sir Francis took notice of that, and says he, we debated it immediately among ourselves. And I remember, particularly, sir Francis Lee, sir Francis Butler, and sir Thomas Field, all three do agree together; this positive oath they swear sir Patience Ward did make. They did debate immediately after, among themselves, two witnesses swearing against him was the occasion of the debate. But, my lord, I must come to another thing: Mr. Aston, a clerk in the court, a man very well used both to writing and hearing; Mr. Aston, as well placed as Mr. Blaney, he gives this account: I do positively say, That the duke was not named after such time as Pilkington came there. But his being a frail memory, as they would have it, and no notes to refresh him, they put no great value upon it: But I remember what Mr. Aston said; I have several times asked the question, and that makes me contain this thing in my memory. This does Mr. Aston positively speak to. So there, Gentlemen, all these five or six several witnesses do positively swear to it: the two first witnesses they are positive, Hatch and Wood; they do directly swear to every particular. Gentlemen, you are not to mind the flourishes that are made by the gentlemen at the bar; here is a lord mayor of London, here is an alderman, can you believe him guilty? But do you think that these gentlemen of quality, that have acquitted themselves so dutifully, and so loyally, as they have done, and so faithfully, that no man can lay a blemish upon them, will you take it upon your oaths, that these gentlemen are forsworn? Will you take it upon your oaths? That will be a strange thing! The laws and the exercise of justice are concerned, and are to be maintained. I beg your lordship's pardon, that I have taken up so much time. My lord, I say, justice is to be done; there is no man so big as to be exempted from punishment: the greater the person is, the greater is his crime. One that will come and tell an untruth in a court of justice, the greater the person, the more is the crime. We have given your lordship, and the gentlemen of the jury, an account of the matter before you, and we shall leave it to you.

L. C. J. Gentlemen of the jury, this is an information against sir Patience Ward for perjury; and the information doth set forth, that there was an action that was brought by his royal highness against Thomas Pilkington, and it was for speaking scandalous words of his highness; saying, he burnt the city, and that he was come to cut their throats, and cut their wives and childrens throats. These were the words that were laid in that action. That action was in this court in Michaelmas term last. The information that now is before you, is this: sir Patience Ward he was sworn to give evidence, and that he in his evidence, upon

his oath, did positively swear, upon mentioning the discourse concerning his royal highness, by Pilkington, and concerning his burning the city, and cutting of throats, sir Patience did say, that there was not any mention of cutting of throats at all, and that before Mr. Pilkington came in the discourse of the duke of York was over. And upon this Mr. Attorney General hath assigned a perjury, that this was false; whereupon the defendant hath pleaded Not guilty. The question is, whether sir Patience Ward is guilty of this perjury or no. In the first place, I must aver to you, that if so be this was false, then this must be what the law calls a wilful and malicious perjury. For it was the very point in question then, it was an action brought against Pilkington; the question, whether he said these words or not? And sir Patience Ward he did come, and did swear, that there was no such thing. Plainly, that was to acquit the defendant. So that it was the principal matter that was to be considered. Now for aught I do perceive plainly —— Pray do not go with any mistake, for I would be loth to do wrong in this; but as far as I do perceive, one side and the other upon the matter do agree, that if sir Patience Ward did swear it positively, it is agreed on both sides that it was false; it is agreed; for aught I see, there is nothing at all said to the contrary. Here are three substantial men, men of very good quality, that do all say there was a discourse of his royal highness in Pilkington's presence, and in the presence of sir Patience Ward; they do likewise all of them swear, that there were such words. So that I say it is agreed, for aught that I see, that it is plain, that it was so in fact, that there was a discourse of the duke, and that it was in Pilkington's presence, and that there was likewise mention of cutting of throats. Now the matter that you are to consider; I will tell you, you are to consider, whether or no this was spoken by sir Patience Ward positively, or as the defendants would have it that it was not spoke in his hearing or as he remembered; for they would qualify it, and say that the defendant did not say it positively but with those qualifications; and if with those qualifications, then it is plain he cannot be convicted of perjury; because no man can be convicted for saying he did not remember. This I must observe to you, though, by the way, suppose now that sir Patience Ward comes here, and says that it was not spoken in his hearing, or in his remembrance, take it that way, there is this considerable, why sir Patience Ward did hear it spoken, and so far heard it, that he took notice of it, and would restrain it, and put an interpretation upon it? Would any man, that had minded his oath, would he have said, that nothing was said in his hearing, when even he himself was present; nay, and so take away the excuse of his not hearing, though he were by? He himself takes notice of it, and if I take it right, he puts an interpretation upon it when he talked of burning the city; oh, it is Hubert. It is very hard for a man to swear it was not in his hearing.———Pray set me right, if I mistake.

Mr. *Pollexfen.* No man denies but these words were spoken; but the going to St. James's, and the duke of York, whether that were not before he came in?

Sir *Geo. Jefferies.* It was one entire sentence, my lord.

L. C. J. I do take it, the evidence was, that Pilkington did say, he had burnt the city, and he was, or would, come to cut their childrens throats; that was in one sentence: For the burning of the city, sir Patience Ward being there at that time when Pilkington said the words, Oh, says he, you mean Hubert; asked the question, Who he meant by it? he meant Hubert.

Mr. *Williams.* He did not hear t'other part.

L. C. J. That I will leave to the jury; that is to say, there were upon the matter but two clauses, burning the city, and coming to cut our throats. And now it is, for aught I perceive, agreed, that sir Patience did hear one part of the sentence, and did not hear t'other. But this I will make an observation on by-and-by. But surely he did not so well, if it were no more than that for a man to say he did not hear any such thing, when it is plain he took notice of it at the same time. For that, gentlemen, that they say here is no man that hath any harm; if a man does commit wilful perjury, though no man is injured by it, hath not he committed a crime? And though he had not injured any man by his perjury, it might have fallen out, that he might have done it; and if so be it hath not success, it is the same crime: For it is very plain, if so be the jury had given a greater credit to sir Patience Ward, than they did to the other two gentlemen, then it is very plain it had gone another way, and that had been an injury. And therefore, gentlemen, that is nothing at all. But that you must lay aside, and you must come to this matter, that is the principal point. The question is, Whether or no sir Patience Ward did give his evidence with qualification, as he did believe, or as he had heard, or believed, or whatsoever it was, or whether he did give the evidence positively. At the trial there was two, I think three, but two that were at first examined, that did prove the words spoken by him against the duke of York, and swore they did reprove him for it. Sir Patience Ward was produced by the defendant, for to defend the issue on his side, and to prove him to be not guilty in that action, that he had not said the words. Now it is plain, if so be sir Patience Ward said only, I don't believe such a thing, I don't remember it, or any such thing, that certainly had not been an evidence that had been worth the consideration of the jury; for that was no more evidence than any man that they might take up; the next man in the court might have said, he did not believe it, or the like. Now for the king, in this case, there are several, I think there are

eight or nine; and they all of them do say, that they remember it very well; nay, and some of the witnesses do say, they took special notice of it then, for they were something astonished to hear such evidence. It is true, all of them don't come to both parts, but either to one part, or to both; they all agree in this, that it was positive evidence, and not as he believed, or heard. There was a question about Mr. Aston, and he was asked himself; he says it was positive; if he did qualify it, it was so low, he could not hear it; and that he might do as he pleased. I think there is none of these gentlemen, that any thing at all is to be alledged against. That eight or nine gentlemen, and some of them of very good quality, and all of them of very good credit, that they should join together to perjure themselves, for a revenge upon sir Patience Ward, is strange. For aught appears, there is not any man appears, but is sorry for him, and some of them have a kindness and respect for him. That is the evidence the former give; I can't go to every one of the evidences, to open what they say; that will make it very long; and I think there is no occasion for it. You have heard it well, and I believe remember it better possibly, than I do. On the other side, for the defendants: They do bring you, in the firs place, Mr. Blaney; and he does say, That he hath taken notes, and in his notes it was by qualifications that sir Patience Ward did speak that it was according to the best of his know ledge, and that he was here, and sat here in a place where he could very well hear all that was said, and that he took it from sir Patience Ward's mouth. This is said against him, tha it is plain he did not take every thing; an whether or no this was taken truly, or not, i still a question for you to consider on. They when they did call him, did say he was as good as ten thousand. They would have this witness to be of more value than nine thousand that did swear upon their memories, and they had some reason to say so too, for to observe there is never a man that does come positively; but he does say, as he takes it, and he was sure it was right, although in some other parts it is plain he did miss. But he does say, it was true. But then for the next witnesses, Mr. Beaver and Mr. Crisp, they do come and say, how that the defendant did interlard his discourse, as he believed, and as he heard. But when he came to be pinched upon that point, Do you swear this thing positively, or according to the best of your memory, then every one of them, (pray correct me, if I be mistaken) every one of these witnesses did say, it was according to the best of his memory. And, gentlemen, the nine witnesses on the other side, every one of them did take it upon them.

Counsel. No, no.

L. C. J. Look you, look you, gentlemen, one spake to one part of the words, another to another; but these witnesses did swear positively to what they did swear.

Mr. *Williams.* They were upon their memories still.

Just. *Withins.* Sir Francis Butler, sir Henry Lee, was not, nor sir Thomas Field; and Hatch and Wood was not.

L. C. J. But did take it upon them positively. For your witnesses, there was Beaver, and Crisp, and Wright; these three, they did say, that sir Patience Ward did say, as he believed, or according to the best of his memory; but they would not take it upon their memories precisely, but according to the best of their memories. And now for colonel Birch, and Northey, and Nelson, and Baker, and Perry; they said, that he said, according to the best of his memory, but they could not hear very well what was said; so that they could not say any one sentence that was said, and that is, I think, the most of the evidence, all your evidence, as to words. You have brought some persons to testify for credit; truly, I think, that of all the aldermen, one that hath passed the chair, should not have brought under an alderman, at least, to have justified him. But 'tis plain there are others come and say, he was a fair dealer, and they have known him for a great many years. Nay, I must confess, here was one of his brethren, sir Harry Tulse, and truly he looked upon him as a fair dealer, and did not look upon him as stained with any enormous vice whatsoever. When he was asked by the king's counsel, whether he did believe he had sworn true in this particular, he could not say so there. But, gentlemen, for all this, I do not see any thing whatsoever hath been said, that doth stick upon his reputation, only this very thing that he must be tried upon. And, gentlemen, upon the evidence you have heard, you are to consider the merits of the cause, and not the person, one way or other, any otherwise than doth relate to it. If you believe the witnesses that have sworn for the king, that he did swear this positively, then it is agreed, that it was false; if he did swear it positively, then you must find the defendant guilty. If so be you believe the evidence that hath been given on the defendant's part, against the king's evidence, if you do believe that, and not the king's evidence, then you must acquit the defendant. It is a great crime, that is the truth of it.

The Jury withdrew, and after some time returned, and brought the Defendant in Guilty; but before the day for Sentence, he thought it best to go out of the way, having had intelligence they intended to set him in the pillory.

After the Revolution, sir Patience Ward was one of the members for the city of London.

" May 19th 1683. Sir Patience Ward alderman of London, and lately lord mayor, was tried by a jury of Middlesex, upon an information against him for perjury, for that he at the trial between the duke of York and Mr. Pilkington in a Scandalum Magnatum, did wilfully and maliciously forswear himself. The

proof against him was by six or seven persons, (three or four of which were aldermen of London) and two or three of the jury in the former trial, who should testify that sir Patience did at that trial swear positively, that the discourse concerning the duke of York was over before Mr. Pilkington came in, and that there was no mention made of cutting of throats while he was there. This was proved pretty plainly, that he should give this evidence at the trial; the defendant's proof was first by Mr. Blandy, a barister, who testified he was at that trial and took notes in short hand (which he writes very dexterously) and that sir Patience did swear, that there was nothing mentioned of the duke but of St. James's in my hearing, and that there was no mention made of cutting of throats to the best of his remembrance; there were two or three other witnesses that testified much the same thing; there were also four or five persons of good credit and quality who were at the former trial, and testified the great caution sir Patience used in the whole course of his evidence; then there were six or seven eminent citizens and great tories who testified as to sir Patience's credit and reputation, that they had known him many years and being concerned with him in great dealings, that they always found him a very just and honest man, and that they did believe he would not wilfully forswear himself; the trial lasted about five hours, so the jury retired from the bar and gave a private verdict and found the defendant guilty, which they affirmed the 21st in open court; and then alderman John Foster produced a letter was privately sent to him, since they gave their private verdict, directing how they might find their verdict in behalf of sir Patience." Narcissus Luttrell's Brief Historical Relation, MS. in the library of All Souls College, Oxford. By a subsequent entry in Luttrell's MS. under date June 30th 1683, it appears that Robert Blandy, esq. a gentleman of the Temple, was taken on account of the plot. See Introduction to the Trials for the Rye House Plot in this Collection.

293. Proceedings against Mr. BENJAMIN LEECH, Bricklayer, at the Old Bailey, for a Contempt,* in offering a frivolous Plea to the Court: 34 CHARLES II. A. D. 1682.

THE Poll of election for mayor for the year ensuing being continued by adjournments from Michaelmas-day to the 2d of October, one Benjamin Leech, bricklayer, being a freeman and liveryman of London, came to Guildhall to poll wherein in discourse he was charged to have said to this effect, "That sir William Prichard should never be lord-mayor, unless he came in by stealth, as North and Rich were sheriffs;" for which he was, without any constable

* For a curious instance of commitment for Contempt, see a Note to the Case of Pilkington and others, at p. 187, of this volume: and for more concerning the punishments for Contempts, see the Case of Richard Thompson, vol. 8, p. 1, and the Notes to that Case.

"October, 1682. One Leach, a bricklayer, having spoke words at the last election of a lord mayor, that the two sheriffs were tools set up by the lord mayor; a bill of indictment was preferred against him to the grand jury at the Old Bailey, and they returned it Billa Vera; but the said Leach gave in a special plea, having council to argue the same; but Mr. Justice Levins and Mr. Recorder, who were then on the bench, would not meddle with the same, without the advice of the other judges; but the lord mayor and the aldermen overruled the said plea, and fined him twenty marks, as 'nihil dicit.'" Narcissus Luttrell's "Brief Historical Relation of State Affairs." MS. in the library of All Souls' college, Oxford.

From the same MS. is extracted also the following brief account of another prosecution for Words, which happened about the same time:

"Oct. 31, 1682. Mr. Edward Whitaker (or the true Protestant Attorney, as some call him) was tried at the King's-bench bar by a substantial jury of the county of Somerset for speaking seditious and scandalous words at the city of Bath in the said county, about the latter end of July, 1680. The words were to this effect, 'That there was talk of a war and rebellion in the late times, but he knew of none: 'it is true there was a war by the parliament 'and people in defence of their just liberties, 'and that the late king was put to death by a 'judicial process and not murdered; and that 'the people had right to a parliament every 'year, and they ought to sit whether called 'or not.' This was fully proved by three witnesses, viz. one George Clark, esq. a justice of peace of that county, sir James Long, and an alderman of the city of Bath, who heard this discourse in a public coffee-house in that city: but the said Whitaker not appearing, nor any for him, the inquest was taken by default; so that the Jury, without stirring from the bar, found him guilty."

"Mr. Whitaker, who was lately convicted of Seditious Words, his wife petitioned the Judges that her husband might have a new trial, he having not due notice thereof; but the judges rejected the same."

Kennett (Compl. Hist. vol. 3, p. 450, 2d ed.) says, under date 1686, "Mr. Edw. Whitaker

or other legal officer, carried before sir John Moor, lord-mayor, before whom he owned the words, or words to that effect, whereupon he was, by the lord mayor, committed immediately to the Compter, from whence he was bailed next day, giving his recognizance, with sureties, to appear at the next sessions at Guild-hall; which sessions of the peace being adjourned to the 13th of October to the Old-Bailey, there was a Bill of Indictment preferred and found against the said Mr. Leech, the tenor of which followeth, viz.

London, ss.

Juratores pro Domino Rege, super sacramentum suum præsentant, quod Benjaminus Leech nuper de London, Bricklayer, existens persona malæ et perversæ dispositionis, secundo die Octobris, Anno Regni Domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Regis, fidei Defensoris, &c. tricesimo quarto; machinans, et false et malitiose intendens pacem dicti Domini Regis infra civitatem London, inquietare et perturbare, ac diversas differentias et dissentiones inter cives civitatis prædictæ, et alios ligeos et subditos dicti Domini Regis infra hoc Regnum Angliæ, de et concernens electione Maioris civitatis predictæ, et vice comitum civitatis predictæ et comitatus Middlesex, suscitare, movere, et procurare; et quendam Williehmum Prichard Militem, adtunc et adhuc unum Aldermannorum civitatis predictæ, et adtunc in electione pro Maiore civitatis predictæ, existens pro uno anno adtunc et adhuc venturo; necnon quosdam Dudley North Armigerum, et Petrum Rich Armigerum, qui quidem Dudley North et Petrus Rich nuper pro antea debito legitimo modo, secundum antiquas privilegias et consuetudines civitatis predictæ, electi et jurati fuerunt vicecomites civitatis London, et comitatus Middlesex; et electionem præfat. vicecomitum per cives civitatis predictæ factam in maximum odium, contemptum, et scandalum inferre, ipse predictus Benjaminus Leech postea, scilicet dicto secundo die Octobris anno supradicto, apud London, videlicet, in parochia Sancti Michaelis Bassishaw, in Warda de Bassishaw, London, predict in Guildhall civitatis predictæ, ibidem ad precuet. machinationes et intentiones suas melius perficiend. habens colloquium cum quodam Thoma Smyth in Guildhall predicta, adtunc et ibidem falso, illicite, injuste et malitiose dixit, retulit, et in auditu diversorum ligeorum et subditorum dicti Domini Regis civium civitatis predictæ, publicavit, Quod Prichard (prefatum Willielmum Prichard Militem, innuendo) non foret Dominus Maior, (Dominus Maior civitatis predictæ innuendo) nisi foret Dominus Maior illicite, et per furtum, Anglice *by Stealth*, prout vicecomites (prefatum Dudley North et Petrum Rich vicecomites civitatis predictæ et comitatus (predict, innuendo) fuerunt vicecomites civitatis et comitatus predictæ: Ad magnam disturbationem pacis dicti Domini Regis, ad magnum opprobrium gubernatorum et gubernationi civitatis predictæ; necnon ad scandalum, opprobrium, defamationem prefati Wilhelmi Prichard Militis et prefati Dudley North et Petri Rich debito modo electi vicecomitum civitatis et comitatus predictæ, in malum exemplum omnium aliorum consimili casu delinquentium, ac contra pacem dicti Domini Regis nunc, coronam et dignitatem suam, &c.

London, ss.

The Jurors for our lord the king, upon their oaths do present, That Benjamin Leech, late of London, bricklayer, being a person of an evil and perverse disposition, the second day of October, in the thirty-fourth year of the reign of our lord Charles the Second, by the grace of God of England, Scotland, France, and Ireland, king, defender of the faith, &c. devising, and falsely and maliciously intending the peace of our said lord the king, within the city of London, to disquiet and disturb, and divers differences and dissentions amongst the citizens of the city aforesaid, and other the liege people and subjects of our said lord the king, within this kingdom of England, of and concerning the election of a mayor and sheriffs of the city aforesaid, and county of Middlesex, to stir up, move and procure; and one sir William Prichard, knight, then, and yet one of the aldermen of the city aforesaid, then in election of mayor of the city aforesaid, being for one year then and yet to come; and also one Dudley North, esq. and one Peter Rich, esq. which Dudley North and Peter Rich, lately before that time, in a due and lawful manner, according to the ancient privileges and customs of the city aforesaid, were elected and sworn sheriffs of the city of London, and county of Middlesex; and the election of the aforesaid sheriffs by the citizens of the city aforesaid made, into the greatest hatred, contempt, and scandal, to bring, the aforesaid Benjamin Leech afterward, that is to say, the said second day of October, in the year abovesaid, at London, viz. in the parish of St. Michael Bassishaw in the ward of Bassishaw, London, aforesaid, in the Guildhall of the city aforesaid, there his aforesaid contrivances and intentions the better to perform, having discourse with one Thomas Smyth, in Guildhall aforesaid, then and there falsely, unlawfully, unjustly, and maliciously did say, relate and in the hearing of divers the liege people and subjects of our said lord the king, citizens of the city aforesaid, publish,

had been convicted in Easter Term, 1682, for 'justifying the rebellion of Forty one, and the 'murder of king Charles I. and flying for the 'same had absconded ever since.' Mr. Attorney-General, in Michaelmas Term, moved for judgment against him; and the court adjudged him 'to pay a fine of 1,000 marks, and re'main in prison (when taken) till the same be 'paid.'"

I conjecture that these two accounts, notwithstanding the slight disagreement between them as to time, relate to the same conviction.

That Prichard (the aforesaid sir William Prichard, knight, meaning) should not be lord-mayor, (lord mayor of the city aforesaid, meaning) unless he would be lord-mayor unlawfully, and by stealth, as the sheriffs (the aforesaid Dudley North and Peter Rich, sheriffs of the city and county aforesaid, meaning) were sheriffs of the city and county aforesaid: to the great disturbance of the peace of our said lord the king, to the great disparagement of the governors and government of the city aforesaid, and also the scandal, disparagement and defamation of the aforesaid sir William Prichard, and the aforesaid Dudley North, and Peter Rich, in due manner elected sheriffs of the city and county aforesaid, to the evil example of all others in the like case offending, and against the peace of our said lord the king that now is, his crown and dignity, &c.

Whereunto the Defendant offered the Plea following.

Leech ad s' Domini Regis.

Et predictus Benjaminus Leech, in propria persona sua venit et defendit vim et injuriam quando, &c. et omnium contemptum et quicquid, &c. et petit judicium de indictamento predicto, quia dicit quod juratores pro Domino Rege predicto, qui indictamentum illud fecerunt et presentaverunt adinde retornati et impannellati fuerunt per quosdam Dudley North Armigerum, et Petrum Rich Armigerum, tanquam vicecomites civitatis London, qui quidem Dudley et Petrus tempore pannelli et retornatus illius per eos sic sancti, non fuerunt nec eorum alter fuet vicecomites dictæ civitatis London, per quod idem indictamentum sic factum et presentatum per hujusmodi juratores sic ut prefertur impannellatos et retornatos per personas tunc non existentes vicecomites civitatis predictæ, vigore statuti in hujusmodi casu editi et provisi, vacuum in lege existit et nullius effectus, et hoc paratus est verificare; unde petit judicium de indictamento illo, et quod indictamentum illud cessetur, &c.

W. THOMPSON.

Leech at the Suit of our Lord the King

And the aforesaid Benjamin Leech, in his proper person, doth come and defend the force and injury, when, &c. and all contempt and whatsoever, &c. and prays judgment of the indictment aforesaid, because he saith the jurors for our lord the king aforesaid, who that indictment made and presented, were thereunto returned and impannelled by one Dudley North, esq. and one Peter Rich, esq. as sheriffs of the city of London, which Dudley and Peter at that time of the pannel, and the return thereof by them so made, were not, nor either of them was sheriffs of the said city of London, by which the said indictment so made and presented by such jurors so as aforesaid impannelled, and returned by persons then not being sheriffs of the city aforesaid, by force of the statute in the like case made and provided, is void in law and of none effect, and this he is ready to verify; whereupon he prays judgment of that indictment, and that that indictment might be quashed, &c. W. THOMPSON.

Which said Plea being ingrossed in parchment, and signed by William Thompson, of the Middle-Temple, counsellor at law, was on Saturday morning delivered into court by the defendant, who pressed that the plea might be received, and he and his bail dismissed from further attendance for that time: whereunto it was answered, that the court would consider thereof till the afternoon. In the afternoon, the defendant attended with Mr. Thompson his counsel; and Mr. Osborn of the Inner-Temple counsellor at law, attended for the king: the court being sat, the plea was read, and then Mr. Osborn moved, that the plea ought not to be received, for that it was a new plea without a precedent, and that it could not be tried or determined there; that it was a frivolous plea, and ought not to be received, and so left it to the judgment of the bench. Upon which Mr. Thompson allowed, that such a plea had rarely been made use of, because the like case had rarely or never happened, but the reason thereof did justify its legality, and therefore pressed that the plea might be accepted; that it never was hitherto denied to any man to plead to an indictment of this nature, what he thought fit in his own defence, especially when he offers the same under counsel's hand; that this was a ready way to determine who were legally sheriffs; if the plea was not good in law, the attorney-general or the king's counsel might demur to it; that if the matter alledged in the plea was false issue might be taken thereon, which might be tried by a jury; but if the matter should appear to be true, there was not so much as any colour in law for those worthy gentlemen, Mr. North and Mr. Rich, to take upon them to return juries; and therefore, in the behalf of his client, demanded again that the plea might be received; the truth or validity thereof being not to be determined, till some answer should be made thereunto by replication or demurring in writing.

In answer thereunto, Mr. Justice Levinz (being the only judge then present) was pleased to express himself to this effect: That he desired to see the statute mentioned in the plea; whereupon it was read, viz. the 11 H. 4. c. 9. Then Mr. Justice Levinz spake to this effect: That this statute was made to prevent the nomination of juries to the sheriffs; and though it be thereby provided that pannels should be returned by the sheriffs without denomination of any, yet he was of opinion that it could not extend to the case in hand, seeing the worthy persons that attended there, were owned as sheriffs by lord mayor, Mr. Recorder, and several aldermen there present, and that he made no difference between sheriffs *de facto* and *de jure*; and that these persons being there so allowed, he must look upon them as sheriffs *de*

jure: That a gaol-delivery had been held, wherein above 40 prisoners had been tried; and that if this plea should be allowed, all the proceedings against them would come in question: and then asked Mr. Thompson, What if all the felons at an assizes should insist upon the like plea, must all further proceedings stop, till the sheriff goes home and fetch his letters patents?

Whereupon Mr. Thompson said, That he thought in that case such stop could not be prevented, the law being plain.

Then Mr. Justice Levinz said further to this effect, That he had considered of this matter; and that in his judgment the plea was a frivolous plea, and ought not to be received; but yet he being the only judge then present, he should advise my lord-mayor and the rest of the bench to take advice of all the judges, before an absolute determination whether the plea ought to be refused or not.

Upon this sir John Peak said, We will not receive the plea; with whom agreed sir James Edwards, sir James Smith, sir Thomas Beckford, and sir Robert Jefferies, and the lord-mayor also.

Sir George Treby, the Recorder, said, That he was of opinion with Mr. Justice Levinz.

Upon this Leech was pressed to plead Not Guilty: which he refused, saying several times, He would plead no other plea than what he had offered. Then the court gave him half an hour's time to advise with his counsel; who withdrew and advised accordingly, and returned with the same resolution not to alter his plea, and tendered his plea again to the court, who again rejected it: and because he would plead no other plea, he (being first asked, whether he would submit to the court and ask pardon; and refusing so to do, having as he apprehended done no wrong) was fined 20 marks, and committed to Newgate till he should pay the same; which was done that night, and Leech thereby discharged.

294. INTRODUCTION TO THE TRIALS FOR THE RYE-HOUSE PLOT containing the Original INFORMATIONS respecting that Conspiracy, as they were published by King James the Second. 35 Charles II. A. D. 1683.

OF the RYE-HOUSE PLOT, there are two contemporaneous Histories: the one intitled, "A "true Account and Declaration of the Horrid "Conspiracy against the late King, his present "Majesty, and the Government: As it was or-"dered to be published by his late Majesty."* This appears to have been by the direction of King Charles the Second and the duke of York, originally composed by Sprat, (who was shortly afterwards made bishop of Rochester) and to have been published by order of king James the Second in 1685, and about the time of Monmouth's Invasion. To this publication were prefixed a Royal Declaration and *Imprimatur* as follows:

"JAMES R.

"James the Second, by the grace of God "king of England, Scotland, France, and Ire-"land, defender of the faith, &c. To all to "whom these presents shall come, greeting.

"Whereas our dearest brother the late king of "ever blessed memory, gave special order in "his life-time for drawing up the following "account and declaration of the Horrid Con-"spiracy against his sacred person and ours; "and had provided, that the substance of it "should be impartially collected out of original "papers, and unquestionable records, and was "himself pleased to direct in what method it "should be digested, taking particular care, "that the truth of the whole narration should "have such clearness and strength, as it might "deserve to be owned by himself. Accord-"ingly it was composed and ready for the 'press, when it pleased Almighty God to take 'that excellent prince to his mercy. And 'whereas it is but too evident, that the same hellish Plot is not entirely extinguished, but that divers of the wicked actors in it are still carrying on new contrivances against the happy peace of our dominions; We cannot but judge it seasonable in this juncture of time to have our subjects reminded of the rise, progress, and mischievous designs of 'that desperate confederacy. To this end, 'having first read and examined this account 'and declaration, that we might be the better 'able to give our royal testimony, as we do 'by these presents, to the faithfulness and 'certainly of the whole relation, we have 'caused it to be now printed and published. 'Given at our court at Whitehall, the 21st 'day of May, 1685, in the first year of our 'reign. By his Majesty's command,

"SUNDERLAND."

* Oldmixon, after calling this History a romance, proceeds to say that "South's conscience could not go Sprat's lengths; for when king Charles II. desired him to write the fable of the Rye-House Plot, which his majesty called a history, South, after he had read all the papers the king had to shew him, refused the work, saying, 'those papers were all copies, and no legal proof, and unless his majesty had better evidence he would not meddle with it,' as Dr. Prideaux, late dean of Norwich, told a gentleman (Mr. P.) of that city, from whom I had it."

"JAMES R.

"Our will and pleasure is, and we do hereby appoint Thomas Newcomb, one of our printers, to print this account and declaration; and that no other person presume to print the same, as they will answer the contrary. Given at our court at Whitehall, the 23rd day of May, 1685, in the 1st year of our reign. By his majesty's command.

"SUNDERLAND."

The other contemporaneous History is the "Confession of Ford Lord Grey." This "Confession," I apprehend, was not printed till the time of Dr. Johnson's "Mæcenas of Literature," Andrew Millar. My copy of it bears this title:

"The Secret History of the Rye-House Plot: and of Monmouth's Rebellion. Written by Ford Lord Grey, in 1685. Now first published from a MS. signed by himself, before the earl of Sunderland. The second edition. London: Printed for Andrew Millar, in the Strand, 1754."

After which Title follows this ADVERTISEMENT:

"The curious and interesting Narrative,* contained in the following sheets, has hitherto escaped the notice of all our writers. The public, therefore, will think itself obliged to those, who have, now for the first time, brought so valuable a memoir to light; as it explains, at full length, all the most secret particulars of what is commonly called the Rye-House Plot; and of the preparatory steps abroad to Monmouth's Rebellion, which happened a few years after.

"This account of both these most remarkable transactions was written by the famous Ford lord Grey, who had been a principal actor in both, and while he was still a prisoner in the Tower for the part he acted in the latter. It is printed, without the least variation, from a manuscript which is a faithful transcript of the original, signed by him before the earl of Sunderland, prime minister to king James the Second: and his Letter to that prince, which accompanied the Narrative, is here prefixed. It would be impertinent to say any thing in recommendation of this anecdote; which every intelligent reader will be eager to see, both on account of the subject, in itself extremely affecting; and of the writer, who was twice in danger of losing his head for the share he had in the conspiracies he describes."

The Letter is then given thus:

LORD GREY'S LETTER to JAMES II.

"May it please your majesty;

"Having received your majesty's command by my lord Lumley, that I should in writing acquaint you with all I know of the designed rebellion in your majesty's brother's time, the late king; and with the correspondence the late duke of Monmouth held in England, in order to his rebellion against your majesty in which I was unfortunately engaged, (and in my heart do sincerely repent of) I have, in obedience to your majesty, given you the fullest account I can: and call God to witness (in whose hands I am) that I have not wilfully concealed any thing from you, that I think of the least importance for your majesty to know; and this I have done to make the best reparation I can both to God and your majesty, for my sin against him in my rebellion against you. Had the fear of death been an inducement to me, I should have followed the example of those who have made discoveries; but I did not think it became me to treat with your majesty, nor to ask that of you which I could have no pretensions to. If the shedding my blood can be for your majesty's interest, I shall be very willing to part with it; and only desire I may have the satisfaction to know that it will be an atonement for the crimes I have committed against you: but if your majesty, out of your great clemency, shall think fit to save me, I hope you will believe that (besides the ties of honour, justice, and gratitude) my own inclination will ever oblige me to sacrifice the life you give to your service, when you please to command it. I lie, Sir, at your majesty's feet, where though I cannot expect, yet it is a pleasure to beg for mercy: the consideration of myself destroys all hopes of that kind, but the observation of your majesty's universal goodness affords me many. I pray God bless your majesty with a long and happy reign over your people; and may all those perish that ever lift up a thought against your majesty's life, or for the disturbing of the peace of your government. Your majesty's most unfortunate subject,

FORD GREY."

Of this "Confession," Hume (vol. 8. p. 182, Note (r) ed. of 1807), says, that it "is the most full and authentic account of all these transactions: but is in the main confirmed by bishop Sprat, and even Burnet; as well as by the trials and dying confessions of the conspirators." It is observable that these expressions, to say nothing of their vagueness or exaggeration, throw some suspicion upon the genuineness of at least Sprat's performance. Hume also imputes to Grey cowardice, both at Axminster, as it seems (I conjecture he had in his mind the affair at Bridport, where, it seems agreed on all hands that his cowardice was most notorious), and afterwards at Sedgemoor.* And upon the whole, a consideration of the cha-

* Of this Narrative, Mr. Fox, in strong but not exaggerated language, says, "that to call it an authentic account is an outrage to common sense."

* It appears by Narcissus Luttrell's "Brief Historical Relation of State Affairs," MS. in All Souls' library, that on May 31, 1682, lord Grey fought a duel with the duke of Albemarle,

racters of Grey and Sprat, and of the circumstances attending their Histories, prevent me from placing any reliance on the testimony of either.

First as to Grey: Throughout the report of the Proceedings against him for debauching his wife's sister (see p. 127, of this volume) he appears to be a most unprincipled miscreant: we find him guilty of the most odious abuse of confidence, the meanest duplicity, the basest falsehood, and the most ungenerous, most ungrateful, and most unfeeling selfishness; a selfishness in gratification of which he scrupled not to blast with universal and irremediable infamy, the reputation of a young woman who had sacrificed to him the purity of her person and the affections of her family. Upon the accession of king James, we find Grey urging Monmouth to undertake his rash and fatal Invasion (though in his "Confession" he represents his "coldness and backwardness to engage the duke or himself in it"). When the invasion was effected, we find him obstructing its success by the most pernicious counsels, and finally defeating it by an act of the most flagrant treachery or cowardice.*

We have seen in the preceeding page, with what warmth of expression he engaged to devote the whole of his future life to James. Nevertheless, at the Revolution, we find him regularly attending the Convention, in which he was one of the (Henry Lord Clarendon, in his Diary, says thirty-five, but the Journal specifies the names of thirty-six) lords who, on Jan. 31, 1689 entered their Protest against the resolution which had been carried, 55 against 41, (See Clarendon's Diary. Ralph, and after him Hume, say the majority was 11) not to agree to the vote of the Commons that the throne was vacant: and on the 4th of February he joined in a second Protest on the like occasion. As to his "Confession" itself,† it was written, as his Letter tells us, by the 'command' of king James, upon whose mercy his life at that time depended. It is not therefore very credible that such a man in such circumstances, writing under such a command, would hesitate to falsify any fact, the falsification of which he conceived might serve him with the king. To the falsehood of the pretences in the Confession, that he rather dissuaded the invasion of Monmouth, Mr. Fox has adverted; and Dalrymple (Mem. part 1, book 2, p. 65), intimates the interested suppression of a very important fact, the connection between Monmouth and Bentinck.

Next, as to Sprat:* Upon the death of Oliver Cromwell, he published verses to celebrate the virtues of that Lord Protector. Of the merits of his hero Sprat's mind was so full, that the exuberance of his praise overflows from the poetry of his Pindarique into the prose of his Dedication to Wilkins. After the Restoration he took orders, and became chaplain to the profligate duke of Buckingham, and also chaplain in ordinary to the king, from whom he obtained, first a prebend of Westminster, and after that a canonry of Windsor. By the desire of the king, and his brother, the duke of York, he composed this History of the Rye-House Plot, for which he was speedily rewarded with the deanry of Westminster and bishopric of Rochester. By king James the Second, he was appointed clerk of his closet, and one of his ecclesiastical commissioners. He suffered, or rather we may suppose, directed, king James's "Declaration for Liberty of Conscience" to be read in Westminster-abbey; and he acted under the ecclesiastical commission until the danger of farther com-

* The concurrent testimony of historians seems to render this indisputable, notwithstanding the story of the "brave captain of the Horse Guards now living, 1718," reported in a Note to 3 Kennett, 432, 2d edition, and the silence of king James in the Letter of July 7, 1685, printed in sir John Dalrymple's Appendix, p. 133, 4to ed. of his Memoirs.

† Sprat, in his second Letter to the earl of Dorset, says, that after the overthrow and execution of Monmouth, James the Second applied to him to write a continuation of his History of the Rye-House Plot, and "to that purpose gave him a sight of multitudes of original letters and papers, together with the confessions of several persons then taken in England and Scotland; who did, indeed, seem all to outvie one another who should reveal most, both of men and things, relating to the old conspiracy as well as to the duke of Monmouth's and the earl of Argyle's invasion." This readiness and copiousness of confession shews how eager those who had fallen into the power of James were to say what would be agreeable to him: but by no means establishes the truth of the matter reported, or even proved to have been so confessed.

* Of this very worthless man, there is, in the Biographia, a life written much too indulgently. Johnson also, in his Lives of the Poets, has inserted a short account of him. Johnson's tender treatment of him may safely be referred to the joint operation of a good and a bad motive—of reverence for the clergy and of party bigotry. Dr. Symmons, in the first edition of his Life of Milton, rightly reprehended the bishop's refusal to admit into Westminster-abbey an inscription to the memory of the author of Paradise Lost: but in the same passage he spoke of "the otherwise respectable name of Sprat." The epithet 'respectable' should not be used as an expletive; and I am glad that I do not find it applied to Sprat's name in the second edition of Dr. Symmons's work. More respecting Sprat, see in the Cases of bishop Compton, A. D. 1686; of Dr. Peachell, A. D. 1687; of the Seven Bishops, A. D. 1688, and of Robert Young and Stephen Blackhead, A. D. 1692, in this Collection.

pliance with the violent measures of the king,* and, indeed, until the insecurity of the king's power had become very apparent. At the Revolution, he took the oaths to king William.† And after this long course of despicable sycophancy and detestable tergiversation, in his Will, dated Nov. 28, 1711, as I meet with it in an Historical Account of Westminster-abbey, he assures his executors, with the most consummate impudence, or the most consummate hypocrisy, (for it cannot be explained by the influence of self-deceit), that "his poor store had been gathered only by ways honest, fair, and honourable, not by any mean or undue methods of heaping riches, which in the several advantages of his conditions in this world his soul had always abhorred;" and he solemnly "praises the Lord, that in an age of so great corruptions, temptations, and prevarications, he had still kept his integrity, and God had made him firm and steady to the faith, doctrine, discipline, and true interest of the Church of England."

Sprat (says Warburton to Hurd in a hint for a "Dialogue") might speak the court sentiments. See "Letters from a late eminent Prelate to one of his Friends." Letter 74, dated Jan. 31, 1755.

But in order to discredit Dr. Sprat's History, it is, indeed, altogether needless to recur to presumptions arising from his character or the circumstances under which he wrote. The author himself completely destroys all its pretensions to authenticity. After the Revolution he thought it, in Johnson's phrase, convenient to extenuate and excuse that performance. In a letter to archbishop Sancroft, which is inserted in the Appendix to the State Letters of Henry earl of Clarendon, he says, "May it please your grace; It being probable that as soon as this convention shall be made a parliament, one of the first things they will fall upon will be the ecclesiastical commission; it was thought necessary by some friends of mine that I should draw up something, though not in defence, yet in extenuation of my fault in sitting there. What I have done in haste, I here send your grace, humbly submitting it to your grace's judgment and correction. That part wherein your grace is mentioned, I beseech your grace to change and alter as you shall think fit; and so any of the rest: and the more faults your grace shall find in it, the kinder I shall take it.

"My lord, I think after this to write a second letter to the same noble person, and therein to defend myself as to the other objections against me, as the acting in the commission of London, and above all the writing the account of the Conspiracy in 1683."*

He accordingly published two exculpatory Letters to the earl of Dorset, in the second of which he informed the world, that shortly after the death of king Charles the Second, king James called for the papers [his account of the Rye-House Plot], and having read them and altered divers passages, caused them to be printed by his own authority. He farther tells us, that he lamented the fall of persons of honour upon whom public judgment had passed, "especially," he adds, "my lord Russel's, after I was fully convinced by discourse with the reverend dean of Canterbury (Dr. Tillotson)

* See the Cases of Compton, bishop of London, A. D. 1686, and of Peachell, vice-chancellor of Cambridge, A. D. 1687, in this Collection.

† He had been employed by king James in drawing up the form of Thanksgiving to be used on the 15th of January, 1688, for the alleged pregnancy of the queen. Whether that king also associated him with Sancroft in drawing up, on the Prince of Orange's descent, the Form of Prayer mentioned in a Note to 3 Kennett, 496, I know not. I recollect not to have ever seen that Form of Prayer. If his assistance were required, I suppose he gave it. In the January following, we find him employed, (see Lords' Journals, Jan. 22nd and 28th, 1688-9. 3 Kenn. 511. 2 Ralph, 28) with other bishops to draw up a Form of Prayer and Thanksgiving for having made his highness the Prince of Orange the glorious instrument of the great deliverance of the kingdom from popery and arbitrary power, and to insert therein a particular prayer for the Prince of Orange.

Sir John Dalrymple, (Mem. part 1, book 5, vol. 1, p. 147) tells us, that during the intended French invasion into Scotland in the year 1708, the English fleet, at the mouth of the Frith of Forth, was mistaken at Edinburgh for the French. Upon that occasion sir Hugh Dalrymple, lord president of the court of session, who was flying into England himself, advised sir James Stuart to do so too, putting him in mind that he had had a hand in drawing the Prince of Orange's Manifesto, he answered: "Ay, ay, my dear, that is true, and I must draw this man's too." I do not find that Sprat ever resigned the office of Clerk of the Closet to king James.

* "1683. The Rye-House Conspiracy discovered, being the last effort of malice to the king and the duke of York. An accident of fire at Newmarket prevented it. It was discovered, about the end of Trinity Term, by Keeling. Shaftesbury said they were too few to do the work, and too many to conceal it. So, on the 19th of November, one of the days appointed for a general insurrection, he went with Walcot and Ferguson to Holland; pretending no longer 'to walk the king out of the kingdom,' as he arrogantly expressed it; when he escaped by an ignoramus jury. Walcot and Ferguson soon returned from Holland, to join with Monmouth, Essex, lord Gray, Escric, Russell, A. Sidney, Hampden, Armstrong, Romney, Rumbold, Sheppard, &c. Four thousand men were said to be engaged in this insurrection." Macpherson's Life of James the First, written by himself, p. 137. (See Introduction to the proceedings against lord Clarendon, vol. 6, p. 291, of this Collection.

of that noble gentleman's great probity and constant abhorrence of falsehood: but that," he would have us believe, "was a good while after." In his second letter he carries his profligacy somewhat farther, alleging in excuse for having acted under the Ecclesiastical Commission, that he should have thought Jefferies and Herbert "would never have ventured their fortunes and reputations, [the reputation of Jefferies!] by exercising a jurisdiction that was illegal." It appears by the Biographia (wherein a reference as to this is made to Wood) that to each of these letters an answer said to have been written by one Mr. Charlton was published shortly after the appearance of the letters, but I have not seen these answers.

To the testimony then of these two Histories, I must apply what Mr. Fox says of Ferguson's Narrative, "where it only corroborates accounts given by others it is of little use, and where it differs from them it deserves no credit."

To Sprat's History, as published by king James the Second, were annexed, what were intitled, "Copies of the Informations and original Papers, relating to the Proof of the Horrid Conspiracy against the late King, his present Majesty, and the Government: as it was ordered to be published by his late Majesty." After Sprat's vague assertion that king James altered "his papers in divers passages" before their publication, it is impossible to say what part of the publication is authentic. An innocent or an honest man would probably have thought it worth his while, from regard to truth and in vindication of his own integrity, as well as of the characters of others, to have particularised the alterations which king James had made, provided those alterations were material. And if those alterations wese immaterial, he would have disdained, by an inexplicit mention of them, to render it uncertain for what part of the publication he was himself responsible. But Dr. Sprat, it seems, thought it convenient to resort to the stale and vulgar artifice of generality ('dolosus versatur in generalibus') and to avail himself of such shelter as can be afforded to guilt and cowardice by the darkness of indefinite expressions.

The "Copies of the Informations and Original Papers," &c. are here given, therefore, rather as curious and interesting illustrations of the following Trials, and of the English history connected with them, than as documents of indisputable authenticity. They are as follows:

COPIES OF THE INFORMATIONS AND ORIGINAL PAPERS

RELATING TO THE PROOF OF THE HORRID CONSPIRACY AGAINST THE LATE KING, HIS PRESENT MAJESTY, AND THE GOVERNMENT: AS IT WAS ORDERED TO BE PUBLISHED BY HIS LATE MAJESTY.

The INFORMATION of JOSIAH KEELING, of the Parish of St. Botolph Without, Aldgate, in the county of Middlesex, Salter. Taken the 12th of June, 1683.

This informant deposeth and saith, That some time before that his majesty went last to Newmarket, about a fortnight or three weeks as he remembers, Mr. Richard Goodenough (under-sheriff to Mr. Bethel and Mr. Cornish, late sheriffs of London) did at the Sun-Tavern, behind the Royal Exchange, take this informant aside, and ask him how many men, he, this informant, could procure to take away the life of the king, and duke of York: he having begun his discourse with this informant, by telling him that we (meaning thereby himself, this informant, and other citizens of London) were like to be in slavery, and to lose our charter: to this question this informant answered, to the best of his remembrance, that he could not procure any to do that work. This informant further saith, That meeting the said Goodenough a second time, while his majesty was yet at Newmarket, he told this informant, That the only way to prevent shedding of blood was to take off the king and duke privately, and renewed his former request to me (this informant) to procure what men I could, towards the effecting of it; and upon this occasion he met me often in London, and came down to my house. This informant further saith, That he at the solicitation of the said Goodenough, and others, did speak to divers persons, that Mr. Goodenough had told this informant, there were several men, that would be concerned in taking off the king and the duke, and they wanted more to make up their complement, which were to be forty in number. Among the persons, that this informant spoke to, there were three, viz. James Burton, of Wapping, White Chappel, cheesemonger; William Thompson, carver, of the same; and Andrew Barber, instrument-maker, of the same: that meeting by appointment, at the Mitre-Tavern within Aldgate, with one Richard Rumball a Malster-man, living at a place called, The Rye (if this informant mistake not the name) within two miles of Hoddesden, in the county of Hertford, or thereabouts, did agree on the Saturday next, before his majesty's return from Newmarket last, to go down to the Rye, being the house of the aforesaid Rumball, and there to effect their design of taking off the king and the duke. The manner whereby they proposed this should be effected, that the said Rumball's house, where they were to meet, being by the high-way side, they that were to be actors in the fact, were to hide themselves under a wall, or a pale; and when his majesty's coach should come over-against the said wall or pale, three or four were to shoot with blunderbusses at the postilion and the horses; and if the horses should not drop, then there were to be two men with an empty cart in the lane near the place, who in the

habit of labourers should run the cart thwart the lane, and so to stop the horses; besides those that were to shoot the postilion and horses, there were several appointed to shoot into the coach where his majesty was to be, and others to shoot at the guards that should be attending the coach. This informant further saith, That meeting with Mr. Robert West, of the Middle Temple, barrister, they went to the Dolphin Tavern in Bartholomew Lane, behind the Royal Exchange, where they met the said Rumball, and one Hone of Southwark, (as this informant believes he was either a carpenter or a joiner) and they discoursing together, when his majesty would come home from Newmarket, Mr. Rumball said, he heard that he would come that night: Mr. West said he had heard that his majesty would not come till Monday; and, said he, I hope he will not come till Saturday, that is the Saturday come sennight. To which Rumball replied, I hope so too. If he do not, said Mr. West to Rumball, why then how many swan-quills? how many goose-quills? and how many pair of crow-quills, will or must you have? Whereto Rumball answered, six swan-quills, twenty goose-quills, twenty or thirty (the informant doth not exactly remember which) pair of crow-quills, with ink and sand proportionable. This informant asking, either the said West, or else the said Rumball, what was meant by those several sorts of quills; was answered, that by the first were meant, blunderbusses; by the second, muskets; by the third, cases of pistols; by the ink and sand, powder and bullet. This informant seeing Rumball the same week that his majesty returned home, told him he had seen the king passing by his house, and that if he had but five men with him, he could have done his business, and the duke's, for that there were but five Life-Guard-men with them. This informant further saith, That the said Goodenough about a fortnight ago, came to this informant's house, and going from thence to the coffee-house, he told him, after he had pulled out some papers, that he this informant must take one of the said papers; who asking the said Goodenough, what he must do with it; he the said Goodenough answered, that he must take to his assistance nine or ten men, such as he could trust, to the end they might consult all the house-keepers, journey-men and apprentices, to see what number of men might be raised upon occasion, either to justify the act, if the king and duke should be taken off, or if not, what strength could be made up in case of an insurrection or a rebellion: and he being told by this informant, that we were well, indeed better than any other nation, (that is) much happier if we could be quiet, otherwise we should involve the nation in blood and confusion; he replied, that he was clearly for taking off the king and the duke, and then there should be quickly an end to it: and this informant further saith, that the two papers now produced by him, were delivered to him by the said Goodenough, and that the paper beginning with these words, viz. '4. From 'White-Chappel Southeast,' and ending 'round 'Goodmans Fields,' was written with Goodenough's own hand, as this informant believes. And this informant saith, That he had received a third paper from the said Goodenough, which he gave into the hands of one Joseph Helby a carver of Limehouse, who put it into his pocket, but said he would not meddle in it. This informant further saith, that the said Goodenough told him he had divided the city and suburbs into 20 parts, and shewed this informant the names of the divisions in writing, having, as he said, taken it out of the map. In the company of the said Goodenough and this informant was one William Rumball, the brother of the said Richard Rumball, to whom a paper was offered, but he would not meddle. In each division there was to be one principal man, to take to his assistance eight or nine more as he thought convenient; but he named none of them to this informant. This informant further saith, That on Thursday last he going into the Salutation-Tavern in Lombard Street, was told there were above stairs some acquaintance of his; he going up, found the said Goodenough there, together with one Wade, Nelthrop, and the aforesaid West, all barristers at law; they called this deponent in jest by the name of Gulick; and he asking them, what they meant by it, they told him, Gulick was a brave fellow and headed the people at Cologne, and they hoped to see this informant do the same at Wapping; and they asked how their friends did in Wapping and what strength they could make there: the informant answered, they would do well enough there, and concluded they were privy to the design. In this company there was one they called captain Walcot, who went over with the earl of Shaftesbury, and came back with his corps; as also one they called colonel, whose name this informant does not know. This informant further saith, that the said Richard Rumball in the conversation above-mentioned with the said Burton, Thompson, and Barber, and this deponent, affirmed, That to take off the king and the duke would be a keeping of one of the Ten Commandments, since it would prevent a rebellion, whereby abundance of blood must be shed. This informant further saith, that he asking West and Goodenough on the the Thursday above-mentioned, what care was taken for arms, he was answered, that he need not take care of that, for there was provision already made; and that the said West recommended secrecy above all things to this deponent, otherwise the present design miscarrying, they should never be able to retrieve it. West further told this deponent on Easter Eve, that since the design to be executed upon the king's return from Newmarket had failed, they intended to take the king and duke off between Windsor and Hampton Court.

12 die Junii, 1683. JOSIAH KEELING.

Josiah Keeling,

Juratis fuit, Coram me, L. JENKINS.

The Joint INFORMATION of JOSIAH KEELING, of the Parish of St. Botolph Without, Aldgate, in the County of Middlesex, Salter, and of JOHN KEELING of the Parish of St. Anne Black-Friars, Citizen and Turner, taken the 14th of June, 1683.

These Informants being in company with Richard Goodenough, this 14th day of June, between the hours of twelve and one, at the Dolphin-Tavern behind the Exchange; and the said Josiah Keeling asking him what account he had of those 20 divisions that he had made of the city, or to that effect; he answered, that he had an account of Lee a dyer in Old-Street, Middlesex, and that he could raise him 500 men: and the said Goodenough being asked by the said informants where those men should have arms and ammunition, and also where other men that were designed to be raised should have the like: it was replied by the said Goodenough, that there were 20,000*l.* already promised, which should be had upon demand, and that the said money was to be distributed to the 20 principal undertakers, proportionably to the lists of men they brought in; or the said Goodenough replied to that effect: the said Goodenough further adding, that the duke of Monmouth, and all his friends would be concerned in raising the said money; and that the said duke would be at the head of the said party, which they propounded to be four thousand in number, and that many more would quickly fall in. And the said Goodenough further said, that a certain colonel (whom the informant takes to be colonel Romsey) would advance 800*l.* or 1,000*l.* towards paying for arms. And the said Goodenough further said, that Wade the counsellor of Bristol or thereabouts, kept in town two or 300*l.* towards paying for arms. And the said Goodenough being asked what he would contribute towards the carrying on of the said design, (he being a rich man) he answered that he had about 60*l.* in plate and 50 or 60*l.* in gold, and had he more it should all go to the same use; and the said Josiah asking him what provision of horse there was, the said Goodenough answered that there were 100 ready, and men to mount them, and if occasion be, there should be more in readiness; and the said informants further say, that the said Josiah, being asked by the said Goodenough, what progress he had made upon those papers he had entrusted with him, and Josiah shewing him the paper of number three (which Goodenough owned to have been delivered by him to the said Josiah, with two papers more) and telling him all was well, enough with us, but asking him withal, what we should do for arms and ammunition, he the said Goodenough answered, that if there was faith in men, money should not be wanting to buy arms and ammunition; and that he was to meet this night them that were principally concerned. And these informants say that the said Josiah (being desirous to pry into the secrets of their design against the Tower) propounded to the said Goodenough, that a person with the staff of a constable should bring in a man bound as an offender before the lieutenant or major Roe; and that at the same time, another person should be brought in upon the same colour, and by that means secure the guard at the gate, till such time that a body of men which was to be lodged in the corner-house of Thames-street or the next to it, should come to their help; for which proposal the said Goodenough applauded the said Josiah very much, clapping him upon the back. And the informant Josiah asking what to satisfy our people we should do for a few arms, he answered, that the said Josiah should have money to buy them. Josiah then asked him what gun-smith he would recommend him to, adding whether he had not best deal with Mr. West's (meaning Mr. West the lawyer's) gun-smith? Whereto the said Goodenough answered, that gun-smith was a very honest fellow, and that he need not distrust him: the said Josiah further asked him, saying you must have some arms; are those disposed that were to be sent to Rye? Whereto Goodenough answered, they were not. Then the said Josiah asked him if they were at West's house, or at the gun-smiths; whereto Goodenough answered, they were at the gun-smiths, who lived in Sheer-lane, on the left hand, as one goes from Fleet-street; and the said Josiah asking the said Goodenough whether they went on with their design of killing the king and the duke between Windsor and Hampton-Court; he the said Goodenough replied no, because they did not usually go together, but they would do it at the bull feast, in Lyon-fields. And these informants further say not. JOSIAH KEELING.

14 die Junii, 1683. JOHN KEELING.

Jurati Prædicti Johan.
et Josiah, Coram me,

L. JENKINS.

The Joint INFORMATION of JOSIAH KEELING, of the Parish of St. Botolph without Aldgate, in the County of Middlesex, Salter, and of JOHN KEELING of the Parish of St. Anne Black-Friars, Citizen and Turner, June 15, 1683.

The informants say, that being in the company of Richard Goodenough at the Sun-tavern behind the Royal Exchange, between the hours of one and three o'clock on the 15th day of this instant June, 1683, they asked the said Goodenough what persons of quality would be concerned: He the said Goodenough replied, that he had discoursed William lord Russel, son to the earl of Bedford, and that the said lord Russel told the aforesaid Goodenough, that he would be concerned in it to his utmost, and that he would use all his interest to accomplish the aforesaid design of killing the king, and the *duke* of York: and these informants further say, that ask-

ing the said Goodenough, what colonel that was that yesterday he the said Goodenough told the informants, Josiah and John, would advance 800 or 1,000*l.* towards carrying on the design of killing the king and duke, he the said Goodenough replied, it was colonel Romsey; and informant Josiah asked the said Goodenough whether it was that Romsey that married the lady Smith, and had commanded forces in Portugal for his majesty, (i. e.) the king of England, he replied it was. Witness our hands, this 15th day of June, 1683.

JOSIAH KEELING.
JOHN KEELING.

The INFORMATION of JOSIAH KEELING, given upon Oath at Hampton-Court, June 23, 1683.

And this informant further saith, that several gentlemen, viz. Mr. Roope, Mr. Fitton Gerrald and Mr. Allen and one other, whose name this informant hath forgot, who as they said came to visit their honest Wapping men, that this informant would recommend to them for such, and also to dine with them at some tavern, which was the Fortune at Wapping, where was Mr. Samuel Gibbs, Mr. Edmund Hunt, Mr. Robert Ferguson, with several other persons that this informant doth not remember, where the aforesaid gentlemen began to drink healths, some of which were as followeth; To the man that first draws his sword in defence of the Protestant religion, against Popery and Slavery; another was To the confusion of the two brothers, slavery and popery; and being asked what they meant (as this informant verily believeth) it was replied, the two brothers at White-hall; the next was To the pinning of Mackinnys head on the Monument for burning the city in 1666. And this informant asking what was meant, they said it was the duke of York. And this informant dining at the Horse-shoe tavern on Tower-hill, with Edward Norton, esq. Mr. Starkey, Mr. Ogle, Mr. Goodenough, and others, forgot by this informant, they drank the foresaid healths, and did explain them as the aforesaid company did. And this informant further saith, that Fran. Goodenough sent a letter to this informant by one Cherry, to acquaint the said informant, that the said Goodenough would with some other gentlemen dine at the end of the town, where this informant dwelleth, and that this informant would speak to such men as he could trust, to meet the aforesaid persons at the Siracusa house; there came with the aforesaid Goodenough one John Row late Sword-bearer at Bristol, with a Dorsetshire gentleman whose name this informant hath forgot; also at the same meeting was Mr. Edmund Hunt, Andrew Barber, William Tomson, James Burton, as this informant verily believes, with several others forgot, where it was agreed, we should discourse so that it might not be understood if we were over-heard. Then the question was, if the foot-ball was laid down how many we might reasonably expect would come in at first laying of it down from our end of the town to play at it? To which it was replied, it was uncertain, but as many as were there would be concerned; to which it was answered by Row, and Goodenough, if we would not in a little time kick the ball effectually, we should be made slaves, for, saith Row, the lord mayor hath imposed sheriffs upon you, and the king will take away your charter, and then you will be in a fine condition, and Goodenough spake to the same purpose; upon which Hunt replied, that he could do as much good as any body, for that foot-ball players often got broken shins, and he the said Hunt could cure them. And this informant further saith, that this discourse was grounded upon this foundation, what men can be raised against the church-warden at White-hall, which was understood the king. And this informant further saith, that Richard Goodenough, and Richard Rumbal, told this informant, that there was a remonstrance or declaration ready drawn up, which would be printed against the day that this designed commotion was to be, wherein they would ease the people of chimney money, which seemed to be most grievous, especially to the common people, and that they would lay the king's death upon the Papists as a continued design of the former plot.

JOSIAH KEELING.

COPY of a NOTE given in by JOSIAH KEELING, 23d of June, and by him received from Goodenough.

From the Tower Eastward on the South-side of Rosemary-lane to Maiden-head-lane, the West side of Maiden-head-lane, the North-side of Upper Shadwell, Westward to New Gravel-lane, the West-side of New Gravel-lane, to the Thames and by the Thames to the Tower.

The streets and allies of note within the bounds: St. Katherine's, East-Smithfield, Ratcliff-high-way, Victualling-office, Butcher-row, Redcross-street, Armitage, Nightingal-lane, Artichoak-lane, Redmead-lane, Wapping, Gun-ally, Cross-ally, Well-ally, Warners-yard, Salters-ally, Green-Bank, Gun-ally, Pump-ally, Meeting-horse-ally, Old-Gravel-lane, Brewer's-lane, Tobacco-pipe-ally, Cinamon-street, Crown-street, Queen-street, King-Edwards-street, King-street, Carman-Rents, Crown-yard, Harrow-ally, Seven-Star-ally, Garter-yard, Wests-garden, Blew-gate-field, Fleece-yard, Chamberlain's-ally, Frankland-street, Match-Walk.

With all other places within the outbounds not named.

The INFORMATION of THOMAS SHEPARD, taken by the right honourable the earl of Sunderland, &c. June 27, 1683.

Some time before my lord Shaftsbury went for Holland, the duke of Monmouth, lord Gray, lord Russel, sir Thomas Armstrong, col. Rom-

sey, and Mr. Ferguson, met at my house in Abchurch-lane, where the subject of their discourse was how to seize your majesty's guards, and in order thereunto, as I afterwards at their next meeting was informed, the duke, lord Grey, and sir Thomas Armstrong, walked about that end of the town, one night; and gave an account that they found them very remiss in their places, not like soldiers, and that the thing, provided they could have a sufficient strength, was feasible enough; but finding that failed, the project was wholly laid aside, so far as I know: After that Mr. Ferguson told me of a project was on foot, for destroying your majesty, and his royal highness, coming from Newmarket. Colonel Romsey, Mr. West, and as I remember, Mr. Wade, came to my counting-house one evening, and began to discourse of it; upon which I told them, that supposing they should effect what they talked of, it could not be expected that if the duke of Monmouth should be crowned, but in honour and for his own vindication, he must search out the assassins, and both try and execute them; so that instead of expecting a reward, they must lose their lives; upon which they ceased their discourse, and went away soon after. Some time after this, Mr. Ferguson told me of a general insurrection intended both in England and Scotland, and in order to it, that sir John Cockran, Mr. Bayly, Mr. Monro, sir Hugh and sir George Cambell, were come up to treat with some of our Englishmen about it; and that the lord of Argyle had made a proposition, That if they would raise him 30,000*l.* he would begin it in Scotland; but finding no hopes of raising that sum, the Scotch were willing to accept of 10,000*l.*: And by means of a letter, which came as I was informed (for there was no name subscribed) from one Mr. Stewart, to some unknown man, which I have forgot; concluding then that it was intended to Mr. Bayly, or some other of those gentlemen, having had some small acquaintance with Mr. Stewart, formerly by means of his brother, who was then a merchant in Burdeaux. and one of my correspondents, I came acquainted with Mr. Bayly, who told me from time to time, what steps they made in it, how he conversed with the duke, lord Russel, major W. and as I remember, colonel Sidney; and that he had divers promises of the money, and desired it might be paid into my hands; at length he told me that 5,000*l.* they had agreed to raise amongst themselves, and that they expected the other half should be raised in the city; but finding no monies could be got in the city, that project f. ll likewise, and as Mr. Bayly told me, all his countrymen were going beyond sea.—A few days after came out the discovery, and I never saw any of them since. Mr. Ferguson told me that my lord Essex was hearty in this business, and that John Trenchard was a man to be depended upon in the West: They had likewise good hopes of sir William Courtney, and that my lord Shaftsbury had sent captain Walcot down to him, who returned with a very cool answer that he found them not what he expected, but believed if it came to a rising, they would prove right enough. I had almost forgot to acquaint your majesty that both Mr. Ferguson and Mr. Bayly told me; That Mr. Charleton had once promised to see the 10,000*l.* paid.

Jurat, Coram me, THOMAS SHEPARD
June 27, 1683. SUNDERLAND.

The INFORMATION of JOSEPH HOW, of the Parish of St. Giles's Without, Cripple-gate, in the County aforesaid, Distiller, taken upon Oath before sir Reginald Forester, bart. this 15th day of June, 1683, against Thomas Lea, of Old-street, in the Parish aforesaid, in the County aforesaid, Dyer, for speaking of dangerous and seditious words.

This informant deposeth and sayeth, That the said Thomas Lea, being at his house in White-Cross-Street, on Thursday last, between two and three o'clock in the afternoon, being the 14th of this instant June: the said Thomas Lea was discoursing with him this informant about the loss of the city charter, and other things; upon which the said Thomas Lea fell into a passion, and told this informant that he was one of the number of 10,000 men, which were designed to be ready at an hour's warning, and in order thereunto, there was 20,000*l.* in bank, to carry on the undertaking; and many more did every day subscribe money or engage their personal assistance: and the first enterprize they venture upon, is to go very near Windsor, and for to seize the black-bird, and the gold-finch; and that 300 men were designed for that enterprize; and afterwards to seize the militia, Whitehall, and the Tower: but this informant answered that he judged it impossible, the Tower being now so very strong; but the said Thomas Lea told him that he had been round the Tower in company with a captain of a ship, and had found out a place, where a breach might be made, which is to be done by placing some ships on the Thames side, with mortar pieces therein, to dismount the guns; and also to bring the major part of those seamen which were in arrears of pay, to perform the work, they being angry and in want, therefore the fitter for that purpose: and that for the better carrying of the design, several meetings are held (as this day for one) at the King's Head tavern in Athist-Ally near the Royal-Exchange, at two o'clock in the afternoon; further informeth not. JOSEPH HOW.

REGIN. FORESTER.

The EXAMINATION of Colonel JOHN ROMSEY, June 25, 1683.

This examinant saith, That in October or November last, there was an Insurrection intended by the earl of Shaftesbury and that the

said earl of Shaftesbury told this examinant, that Bristol was to be his post, and the examinant being asked what persons of quality or capacity to command as officers, were named as intended to take part in this insurrection; he answered, that he heard my lord Russel named and complained of, and Mr. John Trenchard named by the earl of Shaftesbury; and this examinant further saith, that Row the sword-bearer of Bristol. told him, that Mr. West had acquainted him the said Row, that there was an intention to assassinate the king, at his coming from Newmarket in October last: the examinant doth not remember whether the duke was there or no, but that if he were, he was likewise to have been killed (as the said Row told this examinant,) and this examinant further saith, that about the latter end of November, or the beginning of December last, this examinant having matters of law depending, became acquainted with Mr. Robert West, and employed him as his referee therein; that the said West acquainted this examinant with the design to murder the king at his coming from Newmarket in October last; and told this examinant, that though it miscarried at that time, it was not to be given over so, and therefore desired that he, this examinant, Mr. Richard Goodenough, and some others, which he cannot charge his memory withall, should meet at his the said West's chamber, where this examinant and they did meet within three or four days after, to the best of this examinant's remembrance, and there discoursed about the same design, and let it fall at that time; and this examinant further saith, that about the month of February last, the abovesaid persons met with this examinant at the said Mr. West's chamber, to consider how the design should be brought to effect, at the king's return from Newmarket; and Mr. West, and Mr. Richard Goodenough undertook to find out men for that purpose. And this examinant further saith, that about this time the said West and Goodenough did desire that this examinant would be acquainted with Richard Rumball of the Rye near Hogsden in Hertfordshire, who was the man that would undertake to command the party that should take off the king and the duke; and that at their desire this examinant did consent to a meeting with the said Rumball. When Richard Goodenough brought this examinant to meet Mr. Rumball at the Angel tavern near the Old Exchange, the said Rumball acquainted this examinant how the ground lay, and would have had him gone down to see it; but this examinant refused it. And this examinant further saith, that after that they had several meetings, to try if they could make up the number of forty or fifty men for that purpose, under which number the said Rumball would not undertake it. And this examinant further saith, that at their next meeting two or three days before or after the king's coming from Newmarket in March last, they did resolve that arms should be brought against the next journey to Newmarket in Autumn or any other opportunity, as at the play-house or coming from Windsor to Hampton-Court, or otherwise: and that Mr. West did undertake to provide so many cases of pistols, so many carabins and so many blunderbusses, and this examinant thinks ten musquets: and that it was resolved, that there should be arms provided for fifty men at least: and this examinant further saith, that the men were to be divided, some to shoot the postillion and horses, some to fire upon the king and duke into the coach, and the remainder to charge the Guards; and that there was also a cart to be laid in the way, by which means the coach should be hindered from going on: that the said Rumbal said at their next meeting, after the king's passing by his house, that there were but four of the Guards attending the coach, and that if he had had but a small number of men with him, he could have taken off the king and the duke with ease: and this examinant further saith, that at this last meeting captain Walcot was there present. And this examinant further saith, that he did not meet again in five or six weeks after with the said company, though often pressed by Mr. West that it was not fit to give it over. And this examinant, further saith, that this examinant, the said Goodenough, West, Walcot, Norton, Wade and Holloway did meet at Mr. West's chamber about three weeks or a month since; and did then resolve to try what men could be raised in London and the liberties; and that they might be more certain, London was divided into 20 parts; and Mr. Holloway, Mr. Wade and Mr. West, undertook to make the division; and Mr. West and Goodenough, did undertake to find a man for every division that should bring in the certain number that they could raise respectively. And this examinant further saith, that in the first fortnight or thereabouts they did very little; but the next meeting after Mr. Goodenough brought in an account of seven divisions, which amounted to 3,900 men or thereabouts; and that he the said Goodenough did believe that the remaining divisions would afford as many men more: and it was further resolved at that time that the design in hand should be kept secret until such time as the return of the whole divisions should be brought in.

And this examinant being further asked, whether he did hear any commanders or commission-officers named to command these forces, he saith he heard of no particular names, but in general that there were 100 old officers about the town; that after that they certainly knew how many men all the divisions would amount to, they then resolved this examinant should carry the proposal of commanding these forces to the duke of Monmouth; but the listings not being finished, he never said any thing of it to his grace. And this examinant further saith, that the pretence to make this levy of men was to assert religion and liberties. And this examinant further

saith, that there was a declaration designed to be published when these forces should be up; but that to the best of his memory he never saw it nor heard it read, but he believes some part of it was discoursed of in this examinant's presence; as that touching liberty of conscience, and something relating to the law and the judges. And this examinant further saith, that to the best of his memory on Tuesday last was senn'ight this examinant, captain Walcot, West, Nelthrop, Goodenough and Wade, met at the Salutation tavern in Lombard-street, to know what progress Goodenough had made in the other 13 divisions, who told this examinant and the rest, that he had done nothing since the last meeting; but that he was to meet with some persons that afternoon, who were to give him a further account: and this examinant further saith that after they had dined, one that was a stranger to this examinant came into the room to speak with Mr. Goodenough, and that Mr. West asked him, if he had seen the Gazette of that day, in which was a relation of a commotion in Cologne by one Gulick, and told him he should be our Gulick, for that in Dutch Gu-- was Keil and ick was ing, telling this in a jesting manner. And this examinant further saith that on Saturday last was senn'ight he this examinant, Mr. West, and Mr. Norton, met at the George tavern upon Ludgate-Hill, and then this examinant was told that a discovery was made of what they had been doing, and at present this examinant further saith not.

25 Die Ju ii, 1683. J. ROMSEY.

Capt. et Recognit. Coram,

ALBEMARLE. L. JENKINS.

Further INFORMATIONS of Colonel ROMSEY.

Further this examinant saith, that Mr. Ferguson and the re t did in several meetings since the beginning of February press for the having the men got ready that were to kill the king and the duke, and it was told him by Mr. Goodenough and Richard Rumbal and West, that a great many were poor and could not furnish themselves with horses or arms; this was presently after his coming out of Holland: Mr. Ferguson replied, he would provide the money, and in two meetings afterwards he told them he had 600*l.* ready in gold, that they might depend on him, when they had got the forty or fifty men, under which number Richard Rumbal would not undertake it; and then Rumbal and the rest asked Ferguson at the first mee ing we had, if he thought the duke of Monmouth would not revenge the king's death, and hang those that had been the actors; Mr. Ferguson very freely undertook to have it under the duke's hand against the next meeting, but when we met, he told them there was no saying any such thing to the duke, but he said that we must all be ruined if it were not done: then they asked if the duke would appear when it was done, to which he made answer, that a person would be there, but he must be excused for naming any names, and desired not to be pressed: I told them always they were not to trust to what Mr. Ferguson said, for he was so willing to have the most barbarous murder done that he would say any thing to encourage them to do it; such discourse as this happened several times at our meetings, some saying when our swords were in our hands, if he would not protect them, that then he should be cut off too: such hellish discourses as these we entertained ourselves with, until the news of the firing of New-Market came to town: and then Mr. Ferguson sent for most of us, and was earnest that Goodenough and Rumball should get what men they could, and that he could help them with six, and that Rumbal should attempt it with as many as could be got, but it was given over for that time, because neither arms nor horses were ready; then he promised that he would immediately get the 600*l.* into his own hands to provide all things in a readiness against the first opportunity, whether at the play house, between Hampton-Court, or going to Winchester, and said that some persons were already out to see a fit place to do it in, and if it could not be done before that, then all things should be ready against the king and duke's going down to New-Market, as horses bought and kept in a readiness, and arms which Mr. West undertook to do, he being acquainted with a gun-smith, and upon Mr. Ferguson's promise that he would procure the money Mr. West bespoke the arms, and they were ready in a very little time: but when Mr. West came and told Mr. Ferguson that the arms were ready (for six weeks now I did not see Ferguson, but Mr. West acquainted mewith all passed as follows) he told the said West that his friend had not brought him the money as he promised; also Mr. West was forced to pay for the arms out of his own money, which was not repaid him, as he told this examinant not above twenty days since or thereabouts: The said West told this examinant that Mr. Ferguson told him he might send for his money when he would, by a note to major W but he must tell him the name that he would make the note payable to, that he might tell the same to major W. the name I have forgot. In some very few days after, as he the said West told this examinant, the said Ferguson told him, that he must not send any body or note to receive the said hundred pounds, but Richard Rumbal, because the said W. would not trust any body else; West sent the said Rumbal very early one morning, but the said major W. was gone out of town before he came to the house, which he went and acquainted the said Ferguson with: in a few days after the said Ferguson paid the said West 100*l.* in gold, and as the said West then told this examinant, that the said Ferguson told him, he did receive the said 100 pounds of Mr. Charlton: and about 14 days since the said West and this examinant going to Mr. Ferguson he told us that there was 3,000*l.* raised for to

buy horses, and to maintain them and the men in a readiness, that if any opportunity offered all might be ready; but did not tell us from whom he was to have his money, neither did either of us ask him any question about it. Further this examinant saith, that to the best of his remembrance, in January last, Mr. Nelthrop told this examinant, that meeting colonel Sidney he told him that now something would be done, for that it was resolved to send some persons into Scotland to some gentlemen there come to town, that they might know what the Scots could do, but they knew not of a man fit to send; and the said Nelthrop told this examinant that he recommended one Mr. Aaron Smith as a fit man. And further this examinant saith, that the said Nelthrop told this examinant that the colonel and others had sent him (Aaron Smith) with a letter to sir John Cochran to advise him and his friends, to come to London about their Carolina affairs, and that a good gelding was bought for him, or money given to him to buy one: as also money was given him by colonel Owen to pay his expences on the road, and also that some money was given to his wife for her maintenance, she being in poverty. Upon this letter sir John Cochran came to London, and some other Scotch gentlemen, whose names this examinant does not know, but as the said Nelthrop and Mr. Ferguson did acquaint this examinant they were to treat with some of this nation what was to be done for the delivery of the nations: the said Ferguson told this examinant, that the Scotch gentlemen did acquaint those they treated with, (not naming any of their names) that their people were in very great poverty, but very willing to set themselves at liberty, but they had no arms nor ammunition nor money to buy any, without they could let them have money to furnish arms and ammunition, they could do nothing. During this last transaction of the Scots for money I did not see Mr. Ferguson, but Mr. West who went constantly to him did tell me their discourse, as that sometimes the Scotch gentlemen were departing discontented, and then again in three or four days that they were like to agree, and that money should be provided for them: often he told me of such changes as these in that transaction, and that Mr. Ferguson did assure the said West, that the money would be all paid in one week; I answered the said West, who would have had me gone to Ferguson, that I would not see him until I was certain it was paid, for the said Ferguson undertook much and did nothing but promise what he could not do. There was a debate what declaration should be presently after the murder of the king and duke, and amongst other things a free parliament was one head; liberty of conscience was another; that those that had their lands taken from them at the king's restoration should have them returned: a reformation of the expensive part of the law: Mr. Ferguson undertook that one should be ready; Mr. West did further acquaint this examinant, that my lord Howard had been at his chamber to pump him the said West what we were doing, and that his lordship did desire to have a meeting with the said West and this examinant, which neither the said West nor this examinant were willing to; and the said West did further acquaint this examinant that my lord Howard did propose a council of ten to meet; but we not consenting to meet, the said West did civilly put off the proposition, as he the said West did inform this examinant. And further this examinant saith, that discoursing with Mr. West and Mr. Goodenough, and others about the Scotch affair, they did tell me, that the last spring there was a treaty with the earl of Argyle, and that then without money the Scots declared they could not begin, but that the earl of Shaftesbury broke that design, not consenting to pay the money: this examinant never heard any thing of this design, until the said West, Norton, and Goodenough did tell him thereof. And this examinant further saith, that Mr. Nelthrop and Mr. Wade did always oppose the murdering of the king and the duke, and so did capt. Walcot, but at last the said Walcot consented. And this examinant further saith, that Mr. Bourn, and Mr. Goodenough's brother were at some of the last meetings about the raising of the men: this examinant saith, that to the best of his memory he hath here set down every thing that was said or transacted in the debates when he was there, but he was absent from some. J. ROMZEY.

Colonel ROMZEY's further INFORMATION.

This examinant further saith that being sent by the earl of Shaftesbury about the beginning of November last to Mr. Shepards a merchant near Lombard-street, where was the duke of Monmouth, lord Russel, lord Grey, sir Thomas Armstrong and Mr. Ferguson; this examinant told them my lord Shaftesbury had sent him to tell them it was high time to come to some resolution about the rising: they made him this answer by Mr. Ferguson, (and afterwards my lord Grey said words to the same effect) that Mr. John Trenchard had promised and assured them at his first coming to town that term, that he could in four hours time have 1,000 foot and 2 or 800 horse, but now they had sent to him to know the certainty, he had returned to them this following answer, that men would not be got from home on two or three days warning, but that when such a thing as a rising should be, he must know it sooner, that he might acquaint men to make provision of settlements for their families, so they could not go on at this time any further. And for this reason and that they heard sir William Courtney would not stir, my lord must be contented. This message I returned to my lord: on this my lord resolved to leave England. This examinant further saith, that there was a project of government drawn up by Mr. West and Mr. Wade, which they delivered to this examinant and he gave it to Mr. Ferguson, who told them

that he heard colonel Sydney had drawn one, that he would compare them together and reduce them into one intire one. And this examinant further saith that Mr. Nelthrop told him that my lord of Essex, my lord Russel, colonel Sydney, and young Mr. Hamden, were the persons that did treat with the Scotch gentlemen, and so did Mr. West, and I think Mr. Ferguson. Mr. Nelthrop and Mr. West, during the time I did not see Mr. Ferguson, told me that now they were resolved to raise 10,000*l.* for the Scots, and that next week it should all be paid in. That was about a month since. But they had been with Mr. Shepard the merchant, and he told them there was none paid. This money was to buy arms in Holland. Mr. Ferguson told this examinant the rising must be in Scotland before harvest, or else their people would not be got together, and that in four days after the Scots were up we should have the first intelligence, and that then we must rise in this town and in Taunton. My lord Howard was at first one with my lord Essex and the rest, but he told captain Walcot and Mr. West what passed amongst them, for which reason he was left out of the meetings. Further this examinant saith that Mr. Wade and Holloway told him how they had fixed the matter for Bristol; that they were sure of 300 men, and that they would post them in all the cross streets so that none of the other party should get together in a body or out of their houses. By this means they should be masters of the town without spilling one drop of blood. And this examinant further saith that Goodenough told Wade, West and this examinant, that about 2,500 arms would be wanting for the men that would rise here; for without they were armed that were on the first to rise here, we should be beat; therefore West and this examinant did acquaint Mr. Ferguson from the rest that did meet, of the necessity of having so many arms. He replied, money should not be wanting; but how so many arms could be bought without a discovery? Mr. West did undertake that if money were given, the arms might be had; and some person of the company did name a gun-smith that was an honest man that might without suspicion have 2 or 300 arms, and other gun-smiths might, if inquired after, be found, that might lodge proportionable quantities in their shops, and the men should be led to these shops and armed. It was said by Goodenough that 600 arms were together in the artillery ground which might be easily seized on. Many debates we had about the Tower; some proposed the taking of it by day time by sending some men in only with pocket pistols, and when the sign was given they were to fall on the guard; but this was left off as not agreeing with a rising by night; and then the other way was to clap 2 or 300 fagots to the gates and set them on fire, which would make those within surrender and that ships should come and lye before the Tower and batter it at the same time the fagots were on fire.

J. ROMZEY.

Colonel ROMZEY'S LETTER to the Earl of ROCHESTER, concerning the Scotch Pedlars.

"My lord; When the rising was to have been in November, Mr. Ferguson did say that he could promise for 300 Scots in this town that would be ready at a day's warning and that there was in England 1,200 that might be depended upon; that 3 or 400 did always abide here, the rest were scattered throughout England with packs on their backs for the maintenance of themselves; that a great many of them were gentlemen's sons, and all of them had been at Bothwel-bridge, and betook them to this way to get (and carry) intelligence as well as a living. J. ROMZEY."

Another LETTER from Colonel ROMZEY to the Earl of ROCHESTER.

"My lord; I do not know whether I have already in any of my papers where I mention Mr. Roe, acquainted the king of one passage: he told me, (but I think I have) that Gibbons the duke of Monmouth's foot-man did tell him, that nothing but taking off the two brothers would do the business, and if he would go with him, he would shew him the place to do it; he carried him to my lord of Bedford's garden, where I think he told me is the mount to look into Covent-Garden, and said no place can be like this to lodge men in to do the feat, and shewed him the garden-door where they might make a sally on the coach if they mist with their fire. Mr. Roe asked him, but how will you bring the men in? He told him my lord was long in the country, and he was so well acquainted with the porter and servants that he could have the key at any time. The said Gibbons told sir Thomas Armstrong as if Roe had proposed it to Gibbons, and sir Thomas came to me in a great passion and told me what I have related, and bid me speak to Roe to warn him of talking of any such thing. When I did speak to Roe he confessed the thing, but that Gibbons moved it to him, for he knew not any thing of my lord of Bedford's garden or servants.

This was to be done as the king came from the play. I cannot recollect whether I was twice at Mr. Shepard's with the duke of Monmouth, &c. or but once; but if I was but once, then I heard Mr. Ferguson relate to my lord of Shaftsbury some part of their debates at another time, as that they had resolved of the 19th of November for the rising and some heads of declaration: Whether I heard this debate at Mr. Shepard's or at my lord Shaftesbury's lodgings I cannot be positive in, but Mr. Shepard I believe may remember.

J. ROMZEY."

The farther INFORMATION of Colonel ROMZEY.

This examinant further saith, That Mr. Ferguson was at this examinant's house for 7 or 8

nights, intermitting a night two or three, which time he told me he went to his wife. During the time he was at my house, the duke of Monmouth came to see him, to the best of my remembrance twice; the first time I was with them, and all the discourse that passed was about my lord Shaftsbury's death, and relating the affairs of Holland and the confederates, the duke not staying a quarter of an hour. The next time I was not in the room with them. Sir Thomas Armstrong came several times in a morning to see him, sometimes before I was stirring; the first time I shewed him the room where he lay, and did not go in with him, but went to dress me, I being in my shirt.

ANDREW BARBER'S INFORMATIONS, read in Council, June 23, 1683.

On Saturday morning, about the latter end of March last past, Mr. Keeling came to me, and told me, that he and some other friends of mine, would have me come to the Mitre tavern within Aldgate, because they would drink a glass of wine with me; and there I came to them, and found Mr. Rumbald, a one eyed man, Mr. Keeling, Burton, and Thompson, I sate down with them and drank; soon after Mr. Rumbald fell into discourse concerning getting of arms to his house; he was speaking, he thought it would be a good way to send them in a barge, but he concluded it would not be safe; but said, he thought that those that would be concerned should ride with arms themselves betimes in the morning, or in the night, and so come to his house, and there they should be refreshed, and their horses, till he should order them what to do. Some I understand were to continue on horseback, and they that were to kill the horses, coach-man, and postillion, and to shoot into the coach, were to be on foot; and he would order carts to be set cross the road for to hinder them. So then Rumbald asked if we could shoot well, I told him I could not, I never shot at a mark in my life; the others said, let them alone for that; says Keeling, he is a good soldier and a lusty man, what do you think of him? he made no answer, so I answered I was no soldier fit for that work, and said, that it would be murder to kill, and he said it would be a means not to kill, but to save many thousand mens lives. When I had done, he said he would order some to bring word what coach by the colour of the horses, that they may not be mistaken, for this was to be, as I understood, in Rumbald's own ground, for his house joins to the road; and he said they must come by his house to come to London, so he said, he would engage his life to do it, if he had but thirty men, but he expected forty; and for horses Mr. Keeling said, he would get as many as he could, but it was not concluded on, by reason Rumbald did expect to have seen more at that place, but Mr. Keeling promised him they should be ready at the next meeting, which was to be the next Wednesday after, as I remember, but then I resolved never to come into their company more, nor be concerned with them, because I did understand there would be murder committed, nor have been in their company since, nor I never saw that Rumbald before or since. Likewise I replied, if you should do so, how will you escape? Rumbald answered, he would fight his way through, and separate themselves into by-roads, and make what way they could for London, and then they should do well enough. All this time I never heard that this was intended against the king, for he was never mentioned in any respect, that I did understand, but I did verily believe that it was meant by his royal highness. So we paid our reckoning, which was, I think, 6*d.* apiece, and they went towards the Exchange, but I directly home, and have not been in their company since, nor no other tending to such evil work. ANDREW BARBER.

Moreover, Rumbald said, that there was never above one or two that rid before the coach; and likewise, if they could get to Cambridge heath, or thereabouts, they should have friends enough for their help.

In the Gate-house, June 29, 1683, Major HOLMES confessed,

That in order to the late earl of Argyle's going into Scotland, and raising a rebellion there, he had proposed that 30,000*l.* sterling should be sent to him from hence, by some great persons, with whom a treaty was held for that purpose by Ferguson; but that they refused to advance so great a sum, yet condescended to send him 10,000*l.* which Holmes knoweth not whether the late earl hath accepted of as sufficient for effectuating that design.

Upon his being asked, who were the great men by whose means the money was to be advanced, he protested that he had never conversed with any of them, but that he had heard often the duke of Monmouth, and particularly the lord Russel named; and as to the lord Grey, he did not remember that his lordship was mentioned unto him in the matter of money, but did confess that he had frequently been told of his being engaged in, and a promoter of the design in general.

He confessed, that the letter marked Numb. 2, is from the countess of Argyle to her husband, and that he was to have sent it away by the post last Tuesday into Holland, had he not been taken into custody. That it was directed for Peter Harvie linen weaver (which is not a true name) in Bow Church-yard, and was left at one Mr. Brown's house a cider-seller there, where Holmes usually received her letters under that borrowed name, but saith that he cannot decypher this, nor any of her letters.

As to the long letter marked Numb. 3, he protests he cannot decipher it, nor can positively say for whom it was to have been directed, yet thinks it was to have been carried by Castarres

to Ferguson, and by him to the chief men concerned in the design.

Upon inquiring what is become of the parcel of books, which are the printed Case of the earl of Argyle, and in what method they were brought over from Holland, he confessed that they had been shipped on board of a vessel, called (to the best of his memory) the Success of Colchester, bound for London, and that Spence was afterwards to come in the passage boat designed to have come to Gravesend, but that the wind having been very cross, he came on shore at, or somewhat near Harwich, from whence he came by land to London.

Upon asking what was meant by the figures 80 and 81, in the letters marked Numb. 5, he said he did not well remember, but when I told him that I knew by the cypher, money was meant by 50, and officers by 51, he confessed that it was so; whereupon I did observe to him, that as the late earl was to have had money, so he was to have been furnished with officers for the carrying on the rebellion in Scotland, which also he confessed, but said withal, that this letter was intended for his lady, which he knew by a mark on the back, and showed it to me.

The EXAMINATION of ROBERT BLANEY of the Middle Temple, esq. 29th June, 1683.

This examinant deposeth and saith, that this deponent was invited about Christmas last, on Wednesday the 27th day of December last, (as near as he can remember) by John Row, late sword-bearer of the city of Bristol, to dine with colonel John Rumzey, at his house in Soho Square, where were present the said colonel Romzey, Robert West, Richard Goodenough, Joseph Tyler of Lincoln's-Inn, esq. Christopher Battiscomb, gent. and the said John Row, and this examinant; where being together after dinner, and much wine and other strong drink drank in the said company, a discourse was began, but by whom this examinant cannot remember, about the times being very bad and dangerous for sober men, and what remedies were fit to redress grievances, and rid ourselves of arbitrary power, or to that effect; and it was there likewise discoursed and said, but by whom in particular, this examinant cannot exactly remember, it being so long since, that we should never be well till we were rid of two people, by whom as this examinant did apprehend, were meant his majesty and his royal highness the duke of York. And it was likewise said, that if the great people did but agree to join and rise, or words to that effect, it might be done, for the countries were all willing and ready; then as this examinant doth remember by some one, it was in the said company proposed, and as he verily believes by the said Mr. West, that either a deed of bargain and sale, or lease and release, (one of them it was) should be executed to bar both him in possession, and him in remainder; by which as this examinant did then apprehend, was meant the taking off his majesty, and his royal highness, and so he believes the rest of the said company did also. And a glass of wine did pass round the said table, as a health to the executing of the said bargain and sale, or lease and release, (which he cannot tell, but one of them it was.) And this examinant further saith, that he never was present at any other consultation with the before-named persons, or any others about the death of the king, or his royal highness, or the raising of any rebellion, that this examinant can remember; except that being very frequently as a familiar acquaintance with the said Mr West, he hath often asked him, and the said colonel Rumzey, whether the great men would do any thing, and whether any business would be done; or he used words to that effect, but they did constantly, as this examinant remembers, answer him no, that nothing would be done; and the said colonel Rumzey seemed (as this examinant did apprehend) to be very shy of him this examinant; and much like discourse this examinant hath had with the said Goodenoughs, but never was, as he remembers, acquainted with the prosecution or particulars of such a design in the least. And one Nathaniel Wade also, this examinant hath had some such discourse with, about freeing ourselves from arbitrary power and popery, by a general rising, but any particular ways and methods for the same, or otherwise, this examinant never knew of, or was privy to. And further at present this deponent cannot recollect.

29 Jun. 1683. ROBERT BLANEY.

Jurat. Coram me, L. JENKINS.

The further EXAMINATION of ROBERT BLANEY, July 1, 1683.

Who saith, that he saw Ferguson since the earl of Shaftsbury's death, in the house of one Bourne a brewer, living in Queen-street, over against the lord keeper's; that it was about a quarter of a year since; that Ferguson was in a night-gown, and therefore he believes he lay in that house; that the discourse they had was about the earl of Shaftsbury and his death.

This examinant saith that about three weeks after the earl of Shaftsbury had concealed himself, he saw him at a merchant's house, whose name he remembers not, but the house is in Wood-street, near St. Albans Church; the corner house, having a little yard before it, next door to a house that was one Mr. Biddolfs.

He saith, he knows nothing of the manner of the earl of Shaftesbury's escape nor of Fergusons, nor knows no other places but the above-mentioned, where either of them were at any time concealed.

He remembers that he was twice or thrice at the sign of the Sugar-loaf, near the Devil tavern with Ferguson, and once with another person, who he thinks was young Shute, about the time the earl of Shaftsbury absented him-

self; but that Ferguson was not then disguised, but in the habit he used commonly to wear, which was a russet colour campane coat, and a brown short periwig.

THOMAS LEE, Dyer of Old-street, his CONFESSION, 1st and 2nd July, 1685.

I having been often in the company of Mr. John Atherton, he told me, about May last, that Mr. Goodenough must speak with me, and Mr. William Thomas. We went to the Salutation tavern in Lombard-street, Mr. Goodenough came to tell us and then drew out some papers, (but I saw not what was in them) and there told us that our rights and priviledges were invaded, and that some gentlemen had taken into consideration how to retrieve them, or words to that effect; and did then ask us whether we were willing to assist, and then told us that the city and suburbs were divided into 20 parts, and did desire us to see what men we could get, and told us, that we must discourse with them about a foreign invasion at first, and if that took, then we might know of them, whether they would be willing to assist in their own persons, or by money? Some time after we met Mr. Goodenough at the Amsterdam coffee-house in Bartholomew-lane; I told him that I had acquainted Mr. Charles Bateman and he desired to speak with Mr. Goodenough. That Mr. Bateman told me I must have a care, and speak at a great distance, that he was willing to assist, if he could see but a cloud as big as a man's hand, and after I called on Mr Bateman, and went with him to a sea captain's, and from thence to the duke of Monmouth's house in Soho-square. As we went, Mr. Bateman told me that the duke had told him, that he was glad that ever he came acquainted with those Protestant lords; and did assure me that the duke was very right for the Protestant interest and that we need not mistrust him, and then we called to see Mr. Goodenough, but were too late. The same afternoon I went to see for Mr. Goodenough and found him at the Dolphin tavern in Bartholomew-lane, and I appointed him to come to the King's-head in Swithens-alley in Cornhill; where he came and told me, that they were making ready, and asked me what I had done in that matter? I told him, not much, because I doubted they were not prepared with money and arms, he told me that they had both. I asked him what store of money they had? he told me, 20,000*l.* and then we went into company, and talked no more about that affair. Some days after I met with him again, and he told me, that he had seen Mr. Bateman, and that he hoped he would be very serviceable, and asked me what that Southwark man was? I told him he was very honest and willing, and that I had spoken with him, and he desired that he might speak with him. I called him, and they discoursed together alone, and after that he asked me, who that ancient gentleman was, I told him, that he was an old soldier and that his name was Franks; he desired me to call him, and I did, and discoursed the matter, and he not hearing of it before, was a little surprized; but said, that he was willing to fight for privilege, which he thought was invaded, but not for religion. The next day I went to meet Mr. Goodenough at Richard's coffee-house at Temple-bar; there I met with Mr. Hone, and he had me over to the King's-head tavern, and there told me, it had been our great mischief, that there had not been an understanding betwixt the cavaliers and us; that there were a great many brave men about the Temple, and that the job had been done upon the Blackbird and Goldfinch some time before, if it had not been for an accident that happened at Newmarket. Soon after came in Mr. Francis Goodenough, and Mr. Hone told me that I might be free with him. We discoursed about the matter, he said they were making all things in a readiness against their coming from Windsor, and that he thought they must get 300 horse to seize them coming from Windsor Some time after I met with Mr. Richard Goodenough, and asked him what readiness things were in, he told me that in a few days, he thought he should have an account how many men they could raise. I told him that I had spoken with Mr. Rous, and that he could help them to arms for 100 men; and that a way was proposed how to raise 1,000 seamen, if they would be at the charge of a golden ball to be played upon Blackheath. He asked me what the ball would cost? I told him, I was informed, about 12*l.* He said, if it were 40, they would be at the charge of it. Then he desired to speak with Mr. Rous, and appointed to meet him at the King's head tavern in Swithing's-alley, and they met and went into a room apart, and afterwards we went to Joseph's coffee-house in Exchange-alley, and Mr. Rous told me, that he would see and get 10 sea captains to manage that affair. The next day I met with Mr. Rous at the Amsterdam coffee-house, there he spoke with two captains, as he told me, and from thence he went with them to the Angel and Crown tavern in Threadneedle-street, but I did not go with them. I saw him afterwards at the King's-head, and he told me, he must have Mr. Goodenough go with him to Wapping, I acquainted Mr. Goodenough with it, and he told me, that that business of the Tower was left to some men, that understood those affairs better than himself, and that they must be in a readiness to do all together; I asked him what that was, he told me they must seize the Tower, and take the city, and secure the Savoy and Whitehall, and the king and the duke. Sometime after I met Mr. Francis Goodenough in Westminster-hall, he had me behind Kidals coffee house, and told me, that the country-gentry were ready, and said, he desired it might not be delayed long. The next time I saw Mr. Richard Goodenough, was at the King's-head. I called at Mr. Jenkes, and

understood that he had almost dined, and I left word that I was gone thither, and he came to me, and I told him I had spoke with one in Old-street, and that he was willing to assist with money, and another in White-cross-street, that told me, that he would assist himself, and had arms for ten men, and Mr. Goodenough told me, that they were about summing up their men, and that they should be ready in a fortnight or less.

The EXAMINATION of —— HICKS, living in Friday-street, London, taken before his Majesty, July 3, 1683.

Who saith, that he did hear from Wade (as he thinketh) that the city was to be divided into parts, and that Wade told him, there would be a rising of the papists to cut all their throats, to which he had answered, that he did not believe it; but that the law of nature taught him to stand upon his own defence. And that he the examinant further adding, that this imported evil and that he would not consent to it, Wade then replied, he the examinant must perish then by himself.

The EXAMINATION of ROBERT WEST, of the Middle-Temple, Barrister at law, taken June 23, 1683.

This examinant saith, he having a general acquaintance with those of the city of London, that are commonly called Whigs; observed about Michaelmas last a general discontent amongst them, by reason (as he apprehends) of the elections that had gone before of the mayor and sheriffs, and of their apprehensions of the loss of their charter; whereon this examinant fearing that their hearts might transport them to commit some extravagancies, and to prevent his own family's being ruined by them, was very inquisitive to know whether any insurrection might be designed. And this examinant after some time, was informed by some persons, who at present he cannot remember, that an insurrection was intended in November last in the city of London, but the particulars of it this examinant was never acquainted with; and he heard soon after that the design was wholly laid aside. And this examinant further saith, that about the time his majesty came from Newmarket, in or about October last, he heard that there was a design to seize the king and the duke of York; but this examinant does not know the place where, nor the persons who were to act therein. And this examinant further saith, that about the latter end of October, or the beginning of November last, this examinant met with Mr. Robert Ferguson, whom he had been long acquainted with, and the said Mr. Ferguson gave this examinant an account of the great miseries the people of Scotland lay under, and did believe the people of England would suffer the like, and popery overrun the nation, unless the people themselves endeavoured to prevent it. And told this examinant, that two ways had been thought on (but named not by whom) one by a general insurrection in several parts of the kingdom, and the other a more compendious and safe way of taking away the king and duke by some surprize in some journey. To which this examinant answered to this effect, to wit, that he looked upon the first method to be impracticable and full of hazard, the militia, navy, forts, and ammunition being in the hands of the government, and the people as it were naked; and such an attempt might intail a long and bloody war upon the nation, and must end in the destruction of the king and duke, or else it would be vain. And therefore the second method of taking them off by surprize was most rational, if there were a necessity of doing the one thing or the other. And this examinant further saith that after this discourse, the said Mr. Ferguson went into Holland, and after his return from thence, had several discourses with this examinant to the same effect, concerning the destroying the king and the duke; and that there would be an opportunity shortly of doing it, either upon the king and duke's going to, or coming from Newmarket.

This examinant further saith, that soon after the said Mr. Ferguson, Mr. Richard Goodenough, Mr. Richard Rumbal, this examinant, and sometime colonel Rumzey (so called) and capt. Walcott met, sometimes at this examinant's chamber, and sometimes at other places where they used to debate and consider of the method of putting the design of killing the king and the duke in execution.

And this examinant further saith, that none of the persons above mentioned, save Richard Rumbal only, was to act in person, in the said attempt, but the said Robert Ferguson, Richard Rumbal, and Richard Goodenough, undertook to provide the persons to make the said attempt; which persons were to be 40 at least, and 50 if they could procure them.

This examinant further saith, that there was also a further debate what sort of arms should be made use of in the attempt: and it was agreed there should be blunderbusses, muskets or carbines, and pistols; but how the said arms should be carried down, whether before-hand, or by the persons on horseback, this examinant does not remember they came to any resolution.

This examinant further saith, That it was resolved that some of the persons who were to make the attempt should kill one or more of the horses in the king's coach, and then one party should set upon the coach and shoot into it, and another party fight the guards; and if there should be occasion, a cart should be overturned in the road on purpose to stop the coach.

And this examinant further saith, That after the said resolution above-taken, this examinant was much troubled in his mind, and endeavoured to represent several difficulties and

hazards in the thing, and the ill consequences thereof whether it succeeded or not, with an intention to have diverted the thing.

And this examinant further saith, That after the fire at Newmarket, and before the king's return from thence sooner than was expected, this examinant and the other persons abovementioned met at this examinant's chamber, where, because they had no certain intelligence how long the king would stay there before his return to London, it was agreed, to the best of this examinant's remembrance, that the attempt should be then wholly laid aside.

And this examinant further saith, That some short time after the king's return from Newmarket, there being a discourse at a tavern in the city between this examinant and the said Rumball, and one John Keeling, concerning the disappointment of their said attempt, in not having the arms ready; and the said Keeling openly mentioning blunderbusses, muskets, and pistols, this examinant advised him to call the said arms by the names of swan-quills, goose quills, and crow-quills, that the drawers might not take notice.

And this examinant further saith, That at the same tavern, the said Richard Rumball told this examinant, and the said Keeling, that the king came by his house with a slender guard of six horse, much tired, and that six men well provided might have made the attempt and succeeded in it.

And this examinant further saith, That some short time after, it was agreed by this examinant, the said Ferguson, Rumball, and Goodenough, that some arms should be bought to be in readiness for any occasion: and because this examinant was no otherwise capable to serve in any such design, it was proposed to him, and he undertook to buy some arms; and accordingly this examinant bespake of one Daft, a gunsmith, in Sheer-lane, 30 case of pistols, 30 carbines with belts and swivels, and 10 blunderbusses, besides bullets and flints, on pretence of sending the same into America, but the same were not entered at the custom-house till Tuesday last, although this examinant did design to have done so six weeks before.

And this examinant further saith, That being at a tavern about three weeks or a month since with Nathaniel Wade, Richard Nelthrop, and others, where the said Mr. Nelthrop was reading a Gazette, wherein there were relations of tumults in Cologne, abetted by one Gulick, the said Keeling came into the room to speak with one of the company; and Mr. Nelthrop, in a jesting manner, called the said Keeling, Gulick; whereupon the said Keeling said to this examinant, What think you for all your jesting, if I and some few more of my friends save the city charter and the nation? or words to this effect. To whom this examinant replied, he would do very well to do so: but then asked him the manner how he would do it? To which he answered, That no body should know it till they had done; but hoped he should not be hanged for it: Upon which words this examinant suspecting the said Keeling meant some extravagant thing, bid him take care not to do any foolish thing and ruin the Protestants.

And this examinant further saith, That about Easter last some discourses were had concerning the making some attempt upon the king and duke, between Windsor and Hampton-court, but no resolution therein was ever taken to this examinant's knowledge or remembrance.

This examinant further saith, That there was some considerations lately had how to make an estimate of the strength of the Protestant party, in case they should be put upon their own defence; when it was agreed that the city and suburbs should be divided into 20 parts, and that some person well acquainted in each division, should enquire into and make a return of the number he should find; which returns are not yet made to the examinant's knowledge: and more this examinant for the present saith not. ROBERT WEST.

23 die Junii, 1683.

Capt. et Recognit, Coram me,

L. JENKINS.

The further EXAMINATION of ROBERT WEST, Barrister at Law of the Middle Temple, June 24, 1683.

This examinant saith, That he was informed of the insurrection in his former examination mentioned to have been designed in November last by Thomas Walcot, who told this examinant that the same was projected by the late earl of Shaftesbury, and was to have been put in execution the 19th of November last, but that he looked upon it as a mad thing, which he had no thoughts to engage in; and afterwards told this examinant that it was wholly laid aside.

And this examinant further saith, That to the best of his remembrance Francis Shute, lately deceased, was the person who acquainted this examinant that an assassination of the king and duke in their return from Newmarket in or about October last had been intended, and that he heard the same from Mr. Ferguson; and this examinant asking Mr. Ferguson about it, the said Ferguson told this examinant, that it had not been thought of time enough, and therefore could not be done, or words to that effect.

And this examinant further saith, That he discoursing with the said Ferguson concerning the late intended attempt upon the king and duke in their return from Newmarket, asked the said Ferguson what care was taken to justify the same, if in case it took effect, for that the other party might in revenge shed a great deal of blood, and immediately proclaim the princess of Orange, which would overthrow the whole design. To which he answered me that care would be taken about it, and that the lord mayor and sheriffs and most of the lieu-

tenancy should be secured. But when this examinant desired to know what persons were to be concerned, he had this examinant ask no questions, for things would be managed well, as he said; and that if London was secured, all England would fall in.

And this examinant further saith, That when this examinant asked the said Ferguson whether any declaration was prepared to be published upon such occasion? he told this examinant that it had been considered of and was ready, and would be printed ready to be dispersed: but when this examinant asked him how it should be done, he answered it was assuredly so, but this examinant must ask no questions.

And this examinant further saith, That before this examinant bespake the arms mentioned in his former examinations, the said Ferguson told this examinant that he would give this examinant money to pay for them, for he had 500*l.* or 600*l.* at command, but he paid not the money to this examinant till about three weeks or a month since, and then paid it to this examinant in ninety-three guineas, but would not tell this examinant of whom he had the said money. And this examinant further saith, That the said Ferguson told this examinant that the Scots intended to make some insurrection in Scotland this summer, but were not well able to do so without the assistance of 10,000*l.* or some other great sum to buy arms for them, which he had hopes of getting for them, and that they expected, and he hoped they would be seconded by a party in England both in London and in the northern and western parts. And when this examinant asked him what persons of note would engage in it, and what method they would use, he answered, 'First let us sound our strength, and 'if there be encouragement from that, you will 'not want men of quality to take their post, 'but you must excuse me from naming of them 'till there be occasion.' And this examinant further saith, that though he frequently enquired whether any money had been paid to the Scots, he could not certainly be informed that any money had been paid.

And further saith this examinant, That the arms in his former examinations particularly mentioned were directed by the company then present to be bespoken.

And further this examinant saith, That he hath been often in company with Mr. Edward Norton, of Dorsetshire, as this examinant doth believe, with Nathaniel Wade, a barrister at law, and Francis Goodenough, an attorney at law, at the Castle-tavern, in Fleet-street, and at the Green-dragon tavern upon Snow-hill; where some discourses were held concerning an insurrection in Scotland, and of one in England, if there should be occasion or be thought requisite; at which time the said parties last-mentioned, declared they would not be wanting to act their parts therein. And this examinant further saith not. ROBERT WEST.

24 Junii, cap. et recognit.
Coram me, L. JENKINS.

The further EXAMINATION of ROBERT WEST, taken by my Lord Keeper the 25th June, 1683.

This examinant further saith, That Robert Ferguson in his two former examinations named, told and sent this examinant word by a note, that if this examinant would send to major John Wildman (commonly so called) he would pay 100*l.* for the arms in this examinant's farther examinations mentioned to be bought by this examinant; and this examinant not being willing to speak with the said Wildman himself, sent Richard Rumbald to receive the money; but the said Wildman was gone out of town before the said Rumbald did call at his house. And this examinant further saith, that upon some discourse at one of the meetings in his former examinations mentioned, it was proposed, whether some of the chief ministers of state, particularly the Lord Keeper, the lord marquis of Halifax, and the earl of Rochester that now is, should be killed, and it was agreed that it was very necessary they should be killed; but no particular persons were appointed to do it, as this examinant remembers, it being thought almost impossible for any of the said ministers to escape. And further, this examinant saith not.

25 Junii, 1683. ROBERT WEST.
Cap. et recognit. Coram me,
FR. NORTH, C. S.

The further EXAMINATION of ROBERT WEST of the Middle-Temple, Barrister at Law, taken before Mr. Secretary Jenkins the 26th of June 1683.

This examinant further saith, that some time in the last spring, and to the best of this examinant's remembrance, whilst the king was at Newmarket, Francis Shute, late deceased, came to this examinant with a message from the lord Howard of Escrick, as he told this examinant, to this effect, viz. That the lord Howard had a project for raising a body of men to make an insurrection, and desired this examinant's concurrence and assistance in it; and shortly after, the lord Howard and Mr. Shute came to this examinant's chamber in the Temple, where the lord Howard told this examinant, that except some effort were made by the people towards saving their liberties and religion, all would be lost; or used words to that effect. And this examinant telling his lordship that he saw no way of doing so, that did not endanger the people more in case of a miscarriage, his lordship told this deponent, he had thought of a method feasible in his opinion, and it was this, to the best of this examinant's remembrance, viz. that 10 men of skill and conduct in martial affairs, should meet and each chuse to himself 10 men whom he might use, that every of these 10 men should raise 20 men, so as to make up a body of 2,000 men: that empty houses should be taken for these men, as near the several gates of the city

and other convenient posts, as could be: that the night before the execution intended, the men should be got into those houses, and acquainted with the execution; such as ref[illegible]ed should be clapt into the cellars, and the rest sally out at the most convenient hour, and seize and shut up the gates, and then demand the inhabitants arms; and he doubted not but they would deliver them and people enough come into assistance. His lordship named col. Rumzey, col. Danvers, Mr. Clare and three others whom this examinant hath forgotten, for 6 of the principal 10, and desired this examinant to speak to them to consider of the project and fill up the number of 10; but this examinant having no mind to engage in it, only told col. Rumzey of it, and none other of the parties above-named, who told this examinant he would not meddle in it, and advised this examinant to proceed no further; and when the said lord Howard came to this examinant for an answer, this examinant told his lordship, that he could meet with no encouragement; whereupon his lordship replied he could make as good a shift as other men, and he would trouble himself no further, and came not since to this examinant.

And this examinant further saith, that the said lord Howard at another time told this examinant at a tavern in the city, that he thought it no difficulty with 500 horse to surprize the king, duke and all the court at Newmarket, by beating up their quarters about break of day; but this examinant told the said lord Howard it was impossible to get such a body to so great a distance unobserved, at which his lordship seemed convinced.

And this deponent further saith, that the said Ferguson told this examinant that the arms to be bought with the said 10,000*l.* lay ready provided in Holland to be transported for Scotland, and that the earl of Argyle would go over with them and head the Scots in person; and that one English lord offered to pay the whole 10,000*l.* by mortgaging his estate, if the rest of the managers would have secured him their proportions. But he should not name the lord's name, then but since the said Ferguson told this examinant it was the lord Grey. And further this examinant saith not.

26 Junii, 1683. Capt. ROBERT WEST.
et Cognit. Coram me,
L. JENKINS.

The further EXAMINATION of ROBERT WEST of the Middle Temple, Barrister at Law.

This examinant saith, That he was informed by Mr. Ferguson, and to the best of his remembrance, by col. Romzey likewise, that the late earl of Shaftsbury advised the duke of Monmouth when he went into Cheshire in September last, that if his grace were attended with a good appearance of gentlemen and freeholders there, his grace should set up and declare for a free parliament. And that when his grace was taken into custody by a messenger, the said earl of Shaftsbury advised that the said messenger should be killed, and his grace return into Cheshire, and declare as above, or else post into the west of England and set up there. But his grace, and the lord Grey of Wark, were of another opinion, viz. That his grace should surrender himself, which his grace did accordingly.

And this examinant further saith, That since the insurrection intended in November last was laid aside, this examinant was informed by col. Romzey, that one great reason of its being laid aside, was, that one Mr. John Trenchard on whom there was a great reliance for a considerable body of men in the west, viz. at Taunton, would not undertake to procure such a body, for which he was much reproached by the lord Grey.

And this examinant further saith, That some time before Mr. Ferguson went over into Holland, the said Ferguson, this examinant and one Mr. John Roe late sword-bearer of Bristol, were together at the Y[illegible]ng Devil tavern in Fleet-Street, where some discourse was had concerning the killing the king and duke of York [illegible]d of a general insurrection; but this examinant cannot remember any particular passages of that discourse.

And this examinant further saith, That after the said Ferguson went for Holland, viz. about Christmas last, col. Romzey, this examinant, Richard Goodenough and the said Roe, several times met and discoursed concerning the said design against the king and duke, as also of a general insurrection, which they distinguished by the names of the Lopping Point, and General Point: One of which meetings, to the best of this examinant's remembrance, was at this examinant's chamber in the Temple, where were present besides col. Romzey, this examinant, the said Goodenough and Roe, Mr. Joseph Tyley, Mr. Edward Norton, and Mr. Richard Nelthrop. And the said Mr. Nelthrop approved of an insurrection, but always expressed a detestation of the design to kill the king and duke, as a base ungenerous thing: But the said Roe declared, he would be one to execute it rather than it should fail to be done.

And this examinant saith, That at some or all of those meetings it was discoursed in what place, and in what manner the said design against the king and duke should be put in execution; and it was proposed to be done either in the playhouse, by planting men in the pit about the king's box, armed with pistols and pocket-blunderbusses, who between the acts of the play should make the assault, or in their return from the playhouse by night under Bedford garden wall; because of the convenience for one part of [illegible] assailants walking unsuspected in the pi[illegible] and another walking so in the square within the rails, and another being about the church porch, who upon the first assault might prevent assistance to the king out of Covent-Garden: Or else it might be done as the king and duke were passing down the river in a barge, either by overrunning their barge with a hoy, or else boarding their barge,

and shooting a plank or two out of the bottom with blunderbusses, and so to sink it; but both these ways were looked upon as very hazardous and probable to miscarry, and therefore neither was agreed on.

And this examinant further saith, That in the last Christmas holy-days, col. Romzey invited this examinant, and several others to dinner at his house in King's square in Soho-fields, where dined this examinant, Mr. Richard Goodenough, Mr. Francis Goodenough, Mr. Roe, Mr. Blaney, and to the best of this examinant's remembrance, Mr. Joseph Tyley, and some discourse was then had of the said design against the king and duke, and of a general insurrection, which this examinant proposed to them, being lawyers, to call and distinguish them in this manner; the design of killing the king and the duke, executing a bargain and sale, which was a short manner of conveyance; and the general insurrection, by the executing a lease and release, which is a longer conveyance, which distinction was received, and often afterwards made use of; but the same Blaney was never afterwards, as this examinant remembers, at any other meeting.

And this examinant further saith, That some short time after Christmas last, this examinant, col. Romzey, Mr. Walcot, and Mr. Rumbold met at the Salutation tavern in Lombard street, where it was discoursed, that some preparations ought to be made against the time, that either the said design against the king and duke, or a general insurrection should be put in execution: And it was agreed, that Ferguson should be sent for home, and that Ludlow should be sent for if it could be, and that blank commissions should be drawn up for officers both civil and military and a model of government; but there was some doubt in whose names those commissions should run, and at last it was proposed (but this examinant does not remember by whom) that they should run in the name of the confederate Lords and Commons of England. After which meeting, this examinant and col. Romzey went the same night, to the best of this examinant's remembrance, or soon after, to a coffee house in Popes-head alley, to enquire for one Mr. Thomas Shepard a merchant, for directions how to send to Mr. Ferguson then in Holland, and there found Mr. Shepard. And this examinant, by the consent of the said col. Romzey, wrote a sort of canting letter to Ferguson, to invite him over for his health, but there was no particular business in the said letter; and the said Mr. Shepard sent it: But Mr. Ludlow was never sent for, nor any commissions prepared, nor any frame of government drawn up to this examinant's knowledge, or as he ever heard of.

And this examinant further saith, That about Christmas last he was informed, to the best of this examinant's remembrance, by col. Romzey, that a design for a general insurrection was carrying on, and was managed by a cabal or council, and that the said cabal differed amongst themselves, and the business was like to be at a stand; but the persons of that cabal, the said col. Romzey did not then give this examinant any account of: but the said col. Romsey, this examinant and Nathaniel Wade agreed to draw up some few fundamentals, which they thought reasonable, and the said col. Romzey to present the same to the lord Russel, for him to present to the managers or the duke of Monmouth, which they did accordingly, but the same were rejected, as the said col. Romzey told this examinant, and this examinant hath no copy of them.

And this examinant further saith, That about Hilary term last, this examinant was informed by Mr. Joseph Tyley, and since by James Holloway of Bristol, that there was a considerable party in Bristol, well provided for, and almost impatient for action, and had laid a rational design, if they could be seconded in other places.

And this examinant further saith, That he was informed by Mr. Richard Nelthrop, that col. Sidney had sent Aaron Smith into Scotland, with letters to sir George Cambel, and sir John Cochran, or one of them, upon pretence of a purchase of land in Carolina, but in truth, to get them up to London, in order to settle matters for a rising, or used words to that effect; and that the said col. Sidney gave the said Aaron Smith fourscore guineas, or some such sum for his charges; and Mr. Ferguson hath since told this examinant, that the said Aaron Smith behaved himself very indiscreetly in the said journey, and run a hazard of discovering the design.

And this examinant further saith, That Mr. Ferguson often told this examinant, that it was agreed between several Scots and several persons of quality here in England, that the Scots should have 10,000*l.* from hence to buy arms, and then should rise in Scotland, and be seconded here by an insurrection in England; or if the English would help the Scots to 30,000*l.* they would attempt a rising in Scotland, without being seconded in, or further assisted from England. And that the 10,000*l.* was to be paid this day and that day, but at length the 10,000*l.* sunk to 5,000*l.* but the Scots were resolved to rise though they had nothing but their claws to fight with, rather than endure what they did. And about three weeks or a month since, the said Ferguson told this examinant that col. Sidney and major Wildman had used the Scots ill, and broken with them after making them attend two months; and the reason they broke upon was, That the Scots would not agree to declare for a commonwealth and the extirpation of the monarchy, but that the said Ferguson had hopes of raising the money otherwise, but would not tell this examinant how; neither could this examinant ever be certainly informed, whether any part of the said money has been paid to the Scots. And this examinant further saith, That Mr. John Roe hath told this examinant, that he the said Roe was acquainted with some Scotchmen here in London,

who informed him that there were 2,000 or 3,000 Scots (many of them Bothwel bridge men) who were journey-men and pedlars in and about England, and were under the order and management of ten or twelve Scotchmen in London, who could in a month or six weeks time draw in all up to London: and that the earl of Shaftsbury had a great command of these men.

And this examinant further saith, That about three months since or thereabouts, this examinant being upon the exchange, met with major Wildman, who told this examinant for news that the marquis of Huntly and earl of Douglas, two eminent Papists, were reported to be made general of the forces, and governor of Sterling castle in Scotland, and that a resumption or repurchase of the abbey lands was going to be made there. Whereupon this examinant told the said major Wildman, that he this examinant had a plantation in America where the churchmen never had footing, and would go thither if he was driven from hence. To which the said major Wildman replied, keep here, and don't talk of being driven out, drive them out hence. And this examinant saying, he did not see how that could be done: the said major Wildman returned, it may be done, and must be done, and shall be done; or used words to that effect.

And this examinant further saith, That Mr. Rumbold told this examinant not long since, that major Wildman had shewed him a paper in the nature of a declaration or remonstrance, which he intended to have printed and dispersed among the people at the time of the intended insurrection; and that he the said Wildman had formerly encouraged the said Rumbold in the attempt upon the king and duke in their way to or from Newmarket, but afterward seemed to discourage him.

And this examinant further saith, That after the fire happened at Newmarket, and this examinant, col. Romzey, Walcot, Ferguson, Rumbold, and Richard Goodenough had met twice, and resolved to let making any attempt upon the king and duke alone. The said Ferguson on Saturday or Sunday before the king's return, borrowed forty guineas of col. Romzey, as the said col. Romzey and Ferguson have since told this examinant, in order to set the same on work, but did nothing in it; and hath since repaid 30 guineas, if not the whole 40 guineas to the said col. Romzey.

And this examinant further saith, That after the king's return from Newmarket, the said col. Romzey, this examinant, Ferguson, Rumbald, Goodenough, and Walcot, as this examinant believes, met at the George and Vulture tavern on Ludgate-Hill, where the arms in this examinant's former examinations mentioned and the sorts and sizes thereof were agreed upon: and the said Ferguson told the company that one was employed to see for some convenience between Hampton-Court and Windsor, to make the attempt upon the king and duke, but he never made any report of the message, though he was pressed to it by this examinant and others, being then wholly intent, as this examinant perceived, upon managing the Scotch insurrection.

And this examinant father saith, That soon afterward there were several meetings between all or most of the parties above mentioned, at the Castle tavern in Fleet-street, and Green Dragon tavern on Snow-hill; but this examinant doth not remember any particular discourse at any of the said meetings, other than concerning the progress of the Scotch preparation towards an insurrection.

And this examinant further saith, That there was since proposed making an attempt upon the king and duke in their return from the duke's play-house in the narrow part of the street, but the same was wholly rejected, and this examinant never heard of any attempt designed to be made upon the king and duke at a bull-feast, nor never heard that a bull-feast was to be had till about ten or eleven days since.

And this examinant further saith, That the said Ferguson told this examinant that the insurrection in England intended to second that in Scotland would be in this manner, viz. That one party should be up in the West, at Bristol, Taunton and thereabout, another in Yorkshire at York, another in Cheshire at Chester, and if it could be done, another in Devonshire at Exeter, in every of which places some persons of quality would appear, but named them not, and that the main push was designed at London, and was ordered thus, viz. That several parties should at once attack the Tower, the guards and the Exchange, the Mews, the Savoy and White-hall, and one at Westminster should fall upon the back of White-hall, that a party of horse should be laid at Staines Bridge to way-lay the king and duke if they went towards Windsor, and another party of horse to way-lay them in their road to Portsmouth if they went thither; that the mayor and sheriffs should be seized, but the design was not to be communicated till it was ripe for action, and added, that he hoped the duke of Monmouth and lord Russel might be prevailed with to appear in London.

And this examinant further saith, That after the Scots were disappointed of the money promised to them, the said Ferguson would have had this examinant to have met and discoursed with sir Thomas Armstrong, but this examinant refused to do so; and he once asked this examinant to wait upon the duke of Monmouth, but this examinant refused that also.

And this examinant further saith, That though the said Ferguson was shy of naming persons of quality to this examinant, yet he always believed he meant the duke of Monmouth, lord Russel, lord Grey, col. Sidney, Mr. Charleton, major Wildman and others, but this examinant never discoursed with any of them himself. And col. Romzey about two or three months since to the best of this examinant's remembrance told this examinant that the lord Howard of

Escrik, col. Sidney, Mr. Hampden junior, major Wildman and others whom this examinant hath forgotten, were managers of the design.

And this examinant further saith, That Richard Rumbald was commonly called Hanibal by reason of his having but one eye, and that it was usual at the meetings abovementioned to drink a health to Hanibal and his boys, and this examinant believes the 93 guineas in this examinant's former examination mentioned to be paid to him by the said Ferguson for the arms were given to him by Mr. Charleton, for that the said Ferguson had before told this examinant, that he should have the said money when Mr. Charleton came to town, and when the said Ferguson paid the said guineas to this examinant, he told him he had not had them in his custody above half an hour, and this examinant met the said Charleton going from him when this examinant came to him.

And this examinant further saith, That about five weeks since after the said treaty with the Scots seemed to be broken off, this examinant, col. Romzey, Mr. Walcot, Mr. Wade, Mr. Norton, Richard Goodenough and James Holloway, met at the Young Devil tavern between the two Temple gates, where it was agreed to divide the city into several parts, and to give the several parts to several persons to examine what force might be raised in every one of them, and if 3,000 men could be raised for the first onset, it was thought sufficient encouragement to venture upon an insurrection, and it was not doubted but 20,000 men would fall in if the first onset had any success; and in order to this a large map of the city and suburbs was bought and hung up in this examinant's chamber, where Mr. Wade, Holloway and Francis Goodenough divided the city and suburbs into twenty divisions, which were to be managed thus: one principal man in each division should employ 14 or 15 under him and give them their particular walks, so that they might not interfere one with another and be deceived in their numbers. These were to provide ten men a-piece at least, so that 150 men in each division would make 3,000 out of the twenty divisions, and what was over might be kept for a reserve, but there was no particular method as this examinant remembers agreed upon to use these men, but was deferred till the number was certain, after which division so made, the said Richard Goodenough by reason of his general acquaintance undertook to find out men to act accordingly, and some short time after the said parties above mentioned met at the Green Dragon tavern, where the said Goodenough declared he had employed several persons from whom he hoped to have a good account in a little time, and the next week after the said parties abovementioned and one Mr. Zachary Bourn a brewer whom the said Goodenough had employed in it, met at the Salutation tavern in Lombard-street, but this examinant came not thither till the company just broke up, and did not hear what passed there; and about a week after the same parties, except Holloway (who was gone to Bristol) met again at the Green Dragon tavern on Snow-hill, where the said Goodenough reported that he had an account of 1300 men out of two of the hamlets, and that Southwark would yield more, and Spittle-fields a great number, but had no particular account of other places.

And this examinant further saith, That about three weeks since Richard Rumbald told this examinant that he suspected Mr. Keeling had discovered all the designs, as well that of the intended assassination from Newmarket as the other design then on foot, and that if he were sure of it he would take care to get him knocked on the head, but was unwilling to do so till he were fully satisfied, and about a fortnight since the said Rumbald told this examinant that he had several reasons, to convince him that the said Keeling had made a discovery, and but that he made so many protestations and imprecations to the contrary he would kill him. And this examinant hath heard from Mr. William Rumbald, that he lent the said Keeling 100*l*. on Saturday was senn'ight last, lest the said Keeling should be tempted by want of money, which he then pretended to labour under. And on Monday was senn'ight last, this examinant was informed by the said Mr. William Rumbold that the said Keeling was with persons that afternoon, some of whom he believed would have killed the said Keeling if he had not deceived them by many imprecations that he had made no discovery. And this examinant further saith, that this examinant, col. Romzey, Mr. Wade, Mr. Nelthrop, Goodenough, and Norton had notice on Sunday senn'ight last, by means of the said Keeling's brother, that the said Keeling had made a discovery, and thereupon they resolved to meet early the next morning in order to their escapes, and according to their appointment met in Goodmans-fields, where they endeavoured to hire a boat for Holland, whither all except this examinant were resolved to go, but by reason they could not get clear of Gravesend before five or six o'clock on Tuesday night and so might be taken, they laid aside that design, and every one shifted for himself.

And this examinant further saith, That when this examinant was much dejected, and refused to go for Holland, most of the company, and particularly col. Romzey, looked wistfully in this examinant's face, as if they suspected treachery in this examinant. Whereupon this examinant told the said col. Romzey, this examinant, if he were taken, would not save his life unjustly, and instanced that he had never spoke with the duke of Monmouth, and could say nothing against him, and would not do injustice to the colonel but rather give his right-hand to serve him; which compliment the colonel returned, and so parted, and there was no agreement between all or any of the parties abovenamed to favour one another, and further this examinant saith not.

The further EXAMINATION of ROBERT WEST of the Middle Temple, Barrister at Law, before the Lord Keeper the 27th June 1683.

This examinant further saith, That Mr. Rd. Rumbald and a party of his friends about ten years since designed and were prepared to have killed the king and duke of York in their journey to or from Newmarket, and lay in ambush for that end, but the king and duke went an unusual road through the forest that time, which they never went before or since, and so escaped them; and the said Rumbold also told this examinant that he once had a mind to have taken one of the cellars under the duke's play-house, and by placing barrels of powder there have blown up the play-house when the king and duke were there, but the consideration that a great number of other innocent people must have perished in it diverted him from it, though a friend to whom he communicated the design endeavoured to overrule that objection by saying, "What have the jack-daws to do amongst the rooks?"

And this examinant further saith, That at some meeting before or about Christmas last there was a discourse concerning surprising some garrisons in case of an insurrection, and it was proposed for Portsmouth, that some gentlemen should go into the town and treat the officers of the garrison, who in that bad air were apt to accept of an invitation and drink plentifully, and that in the height of their drinking a party of men who might be brought into town on a market-day in country-men's habits should surprize the guards, who likewise to that end should be treated, and it was thought the townsmen who were uneasy under the insolencies of the garrison would be apt to close in and assist in the enterprize. Pendennis Castle was also mentioned as a place naked and easily seized, and that might be of great use: and this examinant doth not remember any thing said about Hull, but Mr. Ferguson lately told this examinant that he had good assurance of having Newcastle.

And this examinant further saith, That after the intended insurrection in November last was laid aside, Ferguson to the best of this examinant's remembrance told this examinant that the lord Shaftsbury had sent Mr. Walcot to sir William Courtney in Devonshire, to engage him in an insurrection, and to join with some person of quality if it should be thought fit to send one thither, but Mr. Walcot returned without any encouragement from sir William Courtney: and though this examinant knew that the said Mr. Walcot took a journey into Devonshire, yet the said Mr. Walcot kept the business of it close from this examinant, and would own only making a visit to a friend.

And this examinant further saith, That the places usually resolved on for places of rendezvous in case of an insurrection in London, were Saint James-Square, Covent-Garden, Lincoln's-inn-fields, Smithfield, the Royal Exchange, Saint George's Fields, in Southwark, Goodmans-Fields, Spittle-Fields and Moor-Fields, where the arms in the artillery ground were to be seized.

And this examinant further saith, That Mr. Roe told this examinant that he had discoursed with one Mr. Hicks a tobacconist, an Anabaptist preacher, a great ringleader of the Anabaptists, and that the said Hicks had told him that the Anabaptists could, and he believed upon a good consideration would make up an army of 20,000 men, and 1,500 of the 20,000 would be horse, and though perhaps there would be a necessity of making use of some great men at the beginning (and this examinant thinks he mentioned the duke of Monmouth) yet when the Anabaptists were once up, they would not lay down their arms till they had their own terms.

And this examinant further saith, That to the best of his remembrance he was informed by colonel Romzey, that the managers of the general insurrection had one or more meetings at the house of Mr. Thomas Shepherd merchant in Abchurch-Lane or St. Clements-Lane in Lombard street London, and that if the money were paid to the Scots the said Mr. Shepherd was to return it into Holland, and this examinant to the best of his remembrance, once or twice asked Mr. Shepherd whether any money were paid, who answered it was promised several times but he had not any assurance of its being paid. And this examinant believes the said Mr. Shepherd did know of the intended assassination of the king and duke, but doth not remember that this examinant had any particular discourse with the said Mr. Shepherd about it, the said Shepherd having failed to meet this examinant, col. Romzey, and others several times when he had promised to do so.

And this examinant further saith, That Mr. Ferguson to the best of this examinant's remembrance told this examinant since the king went to Windsor, that there had been some thoughts of surprizing Windsor with 500 horse, but upon consideration it seemed impracticable, but he named no persons to this examinant.

And the said Ferguson desired this examinant to speak to Mr. Richard Goodenough to meet sir Thomas Armstrong, which this examinant did, and this examinant believes the said Goodenough and sir Thomas Armstrong have had several meetings, and the said Goodenough hath communicated to sir Thomas Armstrong the design last carrying on for raising 3,000 men out of the twenty divisions of the city and suburbs, and the progress that was made in it.

And this examinant further saith, That at one of the meetings concerning the last mentioned design Mr. Richard Goodenough reported one man (but would not name him) would undertake to bring 1,000 men out of the hamlets, and if occasion were to give satisfaction he would shew them all a football match or other

pastime, but the said Goodenough reported withal that he found most persons insist upon terms, and required to know what ease and advantage they should have in matters of religion, their liberties and properties, and what assurance they should have of their being performed before they would actually engage in arms, for they would not fight to change persons only, but things; but whether any thing was done in order to give them such satisfaction this examinant knows not.

And this examinant further saith, That the fundamentals in this examinant's last examination mentioned to be prepared by Mr. Wade, col. Romzey and this examinant, were only rough drawn up by the said Mr. Wade's own hand, and this examinant did not write them, nor had any copy of them, because if they had been approved of, it was intended to have drawn them into form, and therefore this examinant cannot set them forth exactly, but to the best of this examinant's remembrance the substance of them was to the effect following.

1. That the people should annually meet at a certain time to choose members of parliament without any writ or particular direction to do so.

2. That the parliament should meet at and sit for a stated time, and not to be dissolved, prorogued, or adjourned, but by their own consent; and that no prorogation or adjournment should hinder their meeting before the day to which they were prorogued or adjourned, if there were occasion.

3. That the parliament should consist of a House of Lords and a House of Commons, but the exact number of both or either of them, this examinant doth not remember.

4. That only such nobility should be hereditary as were assisting in this design, the rest should be only for life, and upon their death the House of Lords be supplied from time to time with new ones out of the House of Commons, but whether by the election of the lords or of the prince this examinant doth not remember.

5. The militia should be in the parliament, and the parliament have the nomination if not the election of all judges, sheriffs, justices of peace, and other greater or lesser offices civil or military.

6. That what acts passed in both Houses should be a law for one year without the prince's consent, and what acts passed both Houses in two several parliaments should be a perpetual law without his consent.

7. That a council to the prince should be elected out of the parliament, a certain number of the lords to be elected by the Commons, and a certain number of the Commons to be elected by the Lords, but the number of the council, or of either Lords or Commons to be of it, this examinant doth not remember.

And this examinant further saith, That before the said Ferguson went for Holland this examinant pressing him to know whether the duke of Monmouth were acquainted with the design against the king and duke, and would not hang all persons concerned in it if it succeeded, the said Ferguson said, What if I get it under his hand that he shall not? To which this examinant answered it would be sufficient satisfaction, but when the said Ferguson returned from Holland, and this examinant pressed him again to have security fit to be relied on, he asked this examinant, Whether that were fit to be proposed to the duke? And this examinant saying if he durst not propose it he thought other men ought not to venture upon it: whereupon the said Ferguson said that he had mentioned something concerning the king to the duke of Monmouth, but not assassinating him, to which the duke answered somewhat sternly, You must look upon me in the capacity of a son; which answer for some time dampt the design and always clogged it: but at length it was resolved, that if the duke did prosecute the actors in it, that the duke himself should be killed if it could be done; and this examinant believes col. Romzey was present at or made acquainted by this examinant with the said discourse.

And this examinant further saith, That the said Ferguson to the best of his remembrance, told this examinant that some thoughts had been formerly of making an attempt upon the king and duke the last lord mayor's day either going out of the coach into Guildhall, or in the hall at dinner (which might be done with men with swords only) or in their return from thence at Ludgate or Paul's-Church-Yard, but for the great hazards in either of these ways nothing was resolved on.

And this examinant further saith, That this examinant perceiving that little or no preparations were made for the last designed attempt in the Newmarket journey, told the said Ferguson of it, to which the said Ferguson answered, that he should have a sum of money for it when things were fixt, but not else, for a sum had been deposited in a man's hand (but named not whose) for the former designed attempt in the October journey, and though it was not made use of it was not returned, and there was no asking for such money again. And this examinant further saith, that at one of the meetings concerning the attempt upon the king and duke, this examinant proposed to the said Ferguson, that some of the duke of Monmouth's servants or dependants should be brought into the action, which might be some security to the persons engaged, or at least make the world think the duke concerned in it, if he were not. But Mr. Rumbald did not care to engage with any of them, however this examinant believes the said proposal had been communicated to some of them, for that this examinant was told (to the best of his remembrance) either by col. Romzey or Mr. Ferguson, that sir Thomas Armstrong offered to engage if col. Romzey would, but the colonel refused, and that in case of a general insurrection sir Thomas Armstrong would the night before it attempt to kill the duke of York, by

going to him with a pretence to discover some plot against him.

And this examinant was informed by Mr. John Roe that one Mr. Gibbons who was or had been a servant to the duke of Monmouth met the said Roe in Covent-Garden or carried him thither, and there told the said Roe that was a convenient place to do the trick in (by which this examinant understood the attempt upon the king and duke) and that he the said Gibbons would engage to be one in it.

And this examinant further saith, That about a fortnight before the king's return from Newmarket, when the attempt was resolved on to be made, Mr. Ferguson told this examinant, that the duke of Monmouth and several lords should be invited into the city to a dinner, the same day that the king was to return, so as they might be ready to appear in the city upon the arrival of the news, and the said Ferguson told this examinant, that some preferment was designed for this examinant to consider and give him a note of such lawyers as this examinant thought fit to be and would accept of being judges, but this examinant only smiled at his vanity and never gave the said Ferguson any such account. ROBERT WEST.

27 Junii 1683. Capt.
et recognit. Coram me, F. NORTH, C. S.

The further EXAMINATION of ROBERT WEST of the Middle-Temple, Barrister at Law.

And this examinant further saith, That at one of the meetings held for managing the business of the assassination of the king and duke in their Newmarket journey, there was some discourse about getting the arms down to Mr. Rumbald's house, and the said Rumbald first proposed to put them up in long chests, and send them down by some empty carts from Smithfield, and afterwards he thought to make use of two trusty watermen of his acquaintance, who should lay them in the boat, and carry oysters over them (as sometimes they used to carry oysters) up Ware river, and land them at, or near his own house; or else every man was to carry his own arms, under long coats: but no particular way was resolved on, but such was to be used, as should appear most safe, and at the same or some other meeting for the same purpose, it was discoursed how the men should get down unobserved, and it was thought best that they should go from London in the evening, in small numbers, so as to arrive at the place about midnight and go into an empty house near Rumbald's own house, where their horses should be put into a barn and be refreshed, and Rumbald was to send away his servants early to market, and his wife and daughter he resolved to lock up above stairs: but the greatest difficulty was how these men should get off after the business was done; the road might be full and the party cut off by some force that might come from London, and therefore Rumbald proposed, that if he survived the action or were not disabled in it, to bring them a back way over the meadows, and over Hackney-Marsh (to the best of this examinants remembrance) which he said was a very good way, and all of it to be galloped, and by that means they might get to London as soon as the news could. Or else the said Rumbald offered that the party should retire into his own yard, which was walled in with a high wall, and moated round, which he would undertake to defend against any force that could assault them, and before night he thought all would be dispersed and shifting for themselves, and the road be clear to London, but which course he would take was left to his discretion, as the circumstances of the case should require.

And this examinant further saith that the several ways proposed to surprize and take the Tower of London were these to the best of this examinant's remembrance, one was to send ten or twelve men armed with pistols, pocket daggers and pocket blunderbusses into the Tower under the pretence of seeing the armory, another number should go to see the lions, who by reason of their not going into the inner gate were not to have their swords taken from them, that the persons who went to see the armory should return into the tavern or Sutler's house just within the gate, and there eat and drink till the time for the attempt was come, that some persons should come in a mourning coach or some gentleman's coach to be borrowed for this occasion under pretence of making a visit to some of the lords in the Tower, and just within the gate some of the persons issuing out of the tavern should kill one of the horses, and overturn the coach so as the gate could not be shut, and the rest of the persons within, and those who went to see the lions should set upon the Guards, that upon a signal of the coach driving down, a party of men (two or 300 or more if they could be got, and were to be lodged in empty houses to be hired for that purpose as near the Tower as could be had) should be ready to rush out, and upon the noise of the first shot immediately run down to the gate and break in, this way if at all put in execution was to be in the day time about two o'clock, because after dinner the officers are usually dispersed or engaged in drinking, and the soldiers loitering from their arms.

Another way proposed was that several men should enter actions against one another in St. Catherine's court held for the Tower Liberty within the Tower, and that at the Court day at which time great liberty is allowed to all persons to come in, a party of men should go as plaintiffs and defendants and witnesses, who joined with some others, who should come in under pretence of curiosity as abovementioned, should attempt the surprize, and be seconded by the party from the hired houses, and to the best of this examinant's remembrance a coach was likewise to be made use of in this case, and at one of the late meetings for carrying on

the last insurrection, Mr. Goodenough reported, that an engineer told the said Goodenough that he would recommend some honest stout fellows to be labourers and workmen in the Tower, who should be acquainted with the design and ready to assist in it.

Another way proposed was to surprize it by night, but that was full of difficulty, and all that this examinant remembers to have been proposed was, that a parcel of faggots should be carried down to the gate and fired, and to some other part (this examinant thinks the water gate) if it were practicable, and a great quantity of faggots should be prepared to throw into the ditch and to make up works. That which most perplexed the business was, that to surprize the Tower by night was very difficult, and to begin an insurrection in the day time was as difficult and would lose many advantages that the night or break of day would afford, and therefore no resolution was taken; these were only the debates of the meetings of this examinant and the other persons in his former examination named, but this examinant never heard what the principal managers considered of or resolved on in the case.

And this examinant further saith that Mr. Ferguson used to go by the name of Roberts, and told this examinant he was to go for Holland with or soon after the bills for the money to be paid to the Scots, and that the intention was to land the arms at Edinburgh Frith to the best of this examinant's remembrance.

And this examinant further saith Mr. William Rumbald told this examinant that after it was violently suspected that Mr. Keeling had made a discovery, but had denied it, it was proposed to Mr. Keeling for the satisfaction of his friends that he should go into the country for some time (where it was easy to kill him and bury him privately.)

And this examinant further saith, That after it was certainly known that a discovery was made, it was said by Mr. Wade to the best of this examinant's remembrance, that if 1,000 men could be got together, it were better to venture a push here or in the West to die like men than be hanged like dogs: to which it was answered by colonel Romzey as this examinant believes, it is in vain to think of it, the hearts of the people are down and our great men are good for nothing, or used expressions to that effect.

And this examinant further saith, That on Monday was sen'night last Mr. Ferguson perceiving this examinant much dejected and colonel Romzey, Mr. Wade, Mr. Norton, Goodenough and Nelthrop in some confusion, laught and said to them, Gentlemen, you are strangers to this kind of exercise, I have been used to fly, I will never leave off as long as I live, and I hope to see some of you at Dunbar before Michaelmas or to that effect.

ROBERT WEST.

The further EXAMINATION of ROBERT WEST of the Middle Temple, Barrister at Law.

This examinant further saith, That at some meetings concerning a general insurrection it was discoursed that a body of 500 horse would be necessary to scour the streets to prevent the king's party from embodying, and for fighting the horse guards, or for a pursuit, and to that end it was proposed that some endeavours should be used to bring up a party of horse from the adjacent counties, and that some means should be thought on to seize the life-guard mens horses in their quarters, and the citizens and gentlemens horses in the livery stables, and if there were success and a great body of horse should be necessary, the great number of hackney coach-horses in town would make a good force. It was further proposed, that baricadoes should be made in several great streets, and several churches be used for lodging the men.

And this examinant further saith, That at some of the said meetings it was reported that the king's regiments of foot had not their full complement of men but wanted a great number, and that the officers used to lend one another men when they went upon the guard, and therefore the foot were not so terrible as might be apprehended.

And this examinant further saith, That it was intended in the beginning of the general insurrection in the west to send out a party of horse to seize the marquis of Worcester now duke of Beaufort, and his eldest son, and another party to seize the bishop of Bath and Wells, and some other eminent men of that party, if they were then in those parts.

And this examinant further saith, That some time before Christmas last he was informed by Mr. Roe to the best of this examinant's remembrance that the country expected the city would have been in arms on Michaelmas eve when the present sheriffs of London and Middlesex were sworn, and that he was credibly informed that there were 500 horse in the adjacent counties ready to be marched to their assistance upon the first notice, and that they continued in a readiness for two days expecting notice, but the examinant doth not remember that he named any person from whom he had this information.

And this examinant further saith, That Mr. Ferguson told this examinant that some nonconforming ministers had told him they suspected he was driving on a design to assassinate the king and duke, and begged of him to desist, for that it would bring a reproach upon the Protestant Religion whatsoever the event might be, and that he was forced to assure them there was no such thing intended, but alas, said he, they are weak silly men and not fit for these things who cannot distinguish between destroying a prince merely for his opinion in religion, and destroying tyrants who design to overthrow the laws, religion and all

civil rights and hate the nation. It is a pious glorious action, and such as will teach all princes to use their subjects kindly, or to that effect. ROB. WEST.

The further EXAMINATION of ROBERT WEST of the Middle Temple, Barrister at Law.

This examinant upon further recollection saith, That after capt. Walcot had acquainted this examinant of the insurrection intended to have been made in November last, the said Walcot came a second time to this examinant and told this examinant that the lord Shaftsbury had prevailed with him to engage in it, and that if it proceeded he would engage in it, and desired this examinant to buy for him the said Walcot a long stiff tuck of some cutler this examinant knew, which this examinant undertook and bespoke, but was so long before he could procure it, that the said Walcot had otherwise provided himself, and the design was laid aside first, and this examinant was forced to keep the said tuck, the cutler refusing to take it again.

And the said Mr. Walcot told this examinant to the best of his remembrance, that the lord Shaftsbury had formerly sent for sir George Cambel and sir John Cockran about settling a Scotch colony or plantation in Carolina, but he believed that was only a pretence, and that the real truth was to concert matters in order to some design in Scotland, for the lord Shaftsbury had sent for him upon pretence of some command in Carolina, but when he came the lord Shaftsbury was very cool in it. And this examinant further saith, That the said Mr. Walcot refused a long time to act in any wise in the attempt upon the king and duke in the Newmarket journey, but at length by the persuasion of Ferguson as this examinant believes he undertook to command the party who were to fight the guards or to be one of them, but refused to act in the assassination itself.

And this examinant further saith, The said Ferguson told this examinant that when the earl of Argyle was in England last year he had offered to make a sturdy commotion in Scotland if he might have had but 6,000*l.* (for so low he came down from his first demand of 30 or 40,000*l.*) but our great men were jealous of him then and would not trust him, though he offered that they should employ whom they would themselves to lay out the money in arms, which he said was a great oversight and opportunity lost. And this examinant believes the assassination of the king and duke designed in October last was projected and abetted by the late earl of Shaftsbury, and that the money in one of this examinant's former examinations mentioned to be advanced for that design was advanced by the said earl, because this examinant had heard (but cannot say positively from whom) that the said earl complained of having been ill used in that matter, in the money not being returned though it was not laid out.

INFORMATION of CARLETON WHITLOCK, July 5, 1683.

Mr. West sometime in Easter term last in the court of requests told me, That some desperate fellows had designed to have killed the king as he came last from Newmarket, if they had not been afraid that the duke of Monmouth would have hanged them. Upon which I told him that it had been a villanous action, and that all mankind would have detested the action and the murderers, and that if it ever had been in the duke of Monmouth's power he would certainly have hanged them for it, if they had done it. He told me afterwards that there was a design of raising a considerable sum of money to buy arms, as I remember in Holland, and that major Wildman, col. Algernoon Sidney, and Ferguson managed the business, and that my lord Russel was very active in it, or words to that effect, and that writings were drawn or drawing or to be drawn for the taking up of the money, as I remember he said Ferguson was to manage on the behalf of the Scots. This he told me at his house one day when I dined with him, but upon my not examining him to particulars, he said nothing to me but thus generally; only at his house he said that some of them were for a commonwealth and others for a monarchy.

At Mr. Shute's funeral in the public room Nelthrop came to me and asked me for something for poor Ferguson, as he called him, and told me he was doing a good work for all honest men; I told him I would give nothing to any man for doing work I did not know of.

C. WHITLOCK.

Mr. EDMUND WALLER'S CONFESSION.

I did once meet Mr. West, I do not know the certain time, and he railed so much at those he called Protestant lords, that I asked him if he would have them be rebels, and told him that such men as he and nothing else could ruin the kingdom; this was in the Temple before the hall, the last and only other time that I ever spoke with him in private, that is alone, for we walked in the Temple cloisters: I met him there, and he told me that some people, not naming himself as one, had had a design to set upon the king (I am not certain whether he named Newmarket) but he said it was over, I went from him hastily and only said, These things will hang you and undo a great many other people, as I remember when he said there had been such a design, I told him I did not believe it, and then he said it was to have been done as the king came from Newmarket, and was going on to say more, but I interrupted him and went away, and I believe he was jealous of me, for he called after me and said there was no danger; this was as I think the Saturday before this conspiracy was spoken of in Westminster-hall.

July 6, 1683. EDM. WALLER.

Information of ZACHARY BOURN.

Richard Goodenough bringing Mr. Ferguson alias Roberts (for that name he used to go by) to my house, it was a great while ere I understood any thing at all of the design, but so many coming to him daily as did made me jealous, I did imagine something of it, upon which he took an occasion one day to ask what I thought about the gentlemen that came so often to him, and then says, admit there should be a design on foot for the good of the people of England would you be against it? To which I answered, If I can do it with a safe conscience I could not tell well what I should be persuaded to. As to that, says he, I shall easily satisfy you, and then went on to prove a mutual covenant between the king and the people, that his majesty had broke it on his side, so the people were again at liberty; but to that matter, says he, as indeed I will be plain with you, if you love yourself you must come in, for there is a design on foot so laid, and so far gone that it is impossible it should fail. Then I desired him, if he thought it convenient, to let me know some particulars, which he said he would, provided I would promise him secrecy, but especially I should say nothing to my father or wife, for he thought I would not speak to any body else, upon which I said I would, and then he was plain as he said, and told me as follows.

That there was not a county in England but had prepared for the business less or more, but especially in the north and west, and that they were sure of most places of strength throughout the kingdom, but especially Bristol and Newcastle, and that they were then a considering how to secure Portsmouth, but were afraid they should not, the garrison was so strong.

And that the Scots were to stir at the same time we were, and that we were to lend them 10,000*l.* to be remitted into Holland to buy arms for them; and that he was to go over with the bills of exchange; that he found out a person could deposit the money upon good security, which the lords had promised should be given; that there was a Dutch merchant or two that he had got to provide the arms, for the English could not do it without suspicion.

Then I asked him who the lords were? He told me there was the duke of Monmouth, lord Grey, lord Russel, and major Wildman, and col. Sidney. I told him I wondered the duke would be persuaded to take up arms against his father, for my part I should be very unwilling to trust him; He answered me that he had the greatest assurance in the world of him, and that I need no more be afraid of the duke than of him.

He told me the lord Argile who was to command the Scots was of my opinion too, for he had a few days before sent a letter to him to be well satisfied in the point, and that he had sent him such an answer as he did not doubt would satisfy him.

He told me the duke of York had 14,000 men in half pay about the town, and for his part he thought we ought to defend ourselves, for we could not tell but our throats might be cut every night. I asked him how he could tell all this? He told me that they had a great deal of intelligence from the Tory party, for there were some that were willing to play a sure game and so keep in with both sides. Some little time after this there came one Mr. John Row that was sword-bearer of Bristol with one James Holloway of the same place a merchant, to enquire for Ferguson, but he was unwilling to see him: Then Row asked me to go and give him a dish of coffee, which I did, and James Holloway gave me an account of the posture of affairs at Bristol, which I wondered at, being the first time that ever I saw him, viz.

That they had been ready this two or three months, that there was but 8 in Bristol that knew of it, that he had had some cannon he had taken out of some ships he was concerned in had lain there so long he was afraid they would mistrust something, that he had great plenty of powder and bullet in his own house, and that they had a couple of ships there that would carry 40 guns a-piece which they intended to seize the first rising, and fit out to sea, and then their manner of getting together was thus; some of those 8 had houses out of town, where they would get all of the town they thought were for their purpose; the dissenters under pretence of a meeting, and the others under some colour or other, and then tell them the design, and if they would not go with them they would secure or force them, and that they would seize all the head men of the contrary party, which were not above 30 in all, and that they would post men at the corner of every street so that there should not a man stir without they pleased.

And that to their assistance they should have some colliers out of King Road, and some Scotch pedlars that were about the country, many of whom were of Bothwel-bridge.

He said further that the king would have by the time they begun a great many thousand pounds that they would seize, and that there was a great many of the Tory party that had a great sum of money by them which they must borrow, and that there was not a good horse within 5 miles about them but they knew where to have him; that they wanted but 200 muskets, for they thought they should have more men than arms, which he was come up about, which he hoped the lords would help them to, but if they could not, Mr. Wade would lend them the money to buy them, and that he should pack them up in parcels of goods and send them by the carrier to his house: Mr. Wade told me himself he would do it, that is lend the money, but it was some time after this, Mr. Row set by and approved what Holloway said to be true; after this I went down to the Wells, and staid about a fortnight. When I came home again Mr. Wade came to me and told me I must promise

secrecy, and then he had something to say to me, which was that affairs were settled every where very well but in London, and though the lords had a design to let London alone, yet they saw there was a necessity that the business must be done effectually in London, for if they let that alone it was enough to maintain a war against the whole kingdom, and that their friends here would be all ruined, and that in order to the securing of it they had taken this method by which they might know their strength. They had divided the town into so many divisions and had got honest fellows to consult what men they might expect out of every division, and that they had no body about me that they thought could serve them, and therefore desired me to think if it was not possible to get about 160 men out of Bloomsbury, St. Giles's, St. James's and Soho, and that I might, by way of discourse, ask some of my acquaintance if there should be occasion to defend ourselves whether they could not find out 10 or 15 or 20 men that would assist; that they should have a meeting again in 2 or 3 days, and then he would give me an account of it, and I should go to them. And accordingly on Friday following being the 8th of June towards evening he came and fetcht me out, and carried me to the Dragon tavern on Snow-hill, where I met colonel Romzey, Mr. Robert West, captain Walcot, Mr. Norton, Mr. Wade, Richard and Francis Goodenough: then I was asked if I could not do what Mr. Goodenough had spoke to me about, and was desired not to say any thing about the business to any body in direct terms, but especially to any of the ministers, for West said they were a parcel of rogues that had ruined the people ever since Constantine. I told them I thought Mr. Mead, and Mr. Lobb might be trusted, and that they were, if they would, capable of serving them very much. But they would not hear it then, but the next meeting which was on Monday the 11th ditto at the Salutation in Lombard-street, they did think it was necessary Mr. Lobb should be spoke to, but not directly, which I did, for the next day I went to him, and talking of the badness of the times, I said there was but one way to help ourselves, and that was by arms, and if we should have occasion to do so, I asked him where he could find a good parcel amongst his people that he thought would stir. He told me that the spirits of the people were low, but he did believe there was a pretty many of them that would make use of an opportunity if it was put into their hands, but he could see no hopes of such an opportunity as yet, we were too great cowards, but I bid him not to be out of hopes, and so our discourse ended, for his wife came in.

The next meeting which was on Thursday the 14th ditto, at the Dragon on Snow-hill, Richard Goodenough brought in an account of the divisions he was concerned in, which was all the town almost, but where I was, and at Westminster, where Mr. Grange, a brewer, was concerned, but he never met with us, but Goodenough said he promised 200 men, and would be free of his purse. At this meeting, they resolved on this which had been consulted before, (for now they began to be sure of the design, for they had a probability of 8 or 9,000 men from the account Goodenough gave in and others) that Whitehall should be secured, and the manner thus: That the men in Westminster should be ready to make an attack on that side, that they would get about 100 seamen that should come up in long-boats with hand-granadoes and should attack that part next the water, and that a party of about 500 should come down by Charing-cross, part of which should secure the Mews, and the rest march down and surprize the Guards in their sleep, for it was to have been about one or two in the morning, and that all the chief ministers of state were to be secured, the lord mayor and the sheriffs, and some of the aldermen, another party to secure the Savoy and Somerset house, and that in Covent garden and Lincoln's-inn-fields were to be bodies of men to be ready to give assistance if need were, and that all the expedition imaginable was to be made, for now it was put into the hands of a great many, and there was danger of a discovery. Mr. Goodenough told us that day that he had met with an engineer that would do strange things about taking the Tower, and that he had six or seven mortar pieces that belonged to the Tower, and that he would take care to keep them this month or six weeks; at that time Mr. West said he thought I must secure my neighbour, meaning the lord-keeper, but I told him I would do no such thing as to fall on a neighbour; truly, he said, he should be very willing to come to account with him, and if he did he should put him in mind of Colledge. At this time, Goodenough said the people that he had spoke of the matters to, desired they might know what they must trust to, for if the design was only to change persons they had as good have the father as the son, and therefore desired some heads might be thought on and carried to the duke, to be signed by him the night before the design began, and these five things were resolved on:

1. That the militia should be in the hands of the people.

2. That they should choose their own sheriffs in every county.

3. That we should have a parliament once a year, and that they should sit as long as they had any thing to do.

4. That they should have liberty of conscience.

5. That all the nobility of England that had acted contrary to the interest of the people should be degraded.

Mr. Wade was to put these in writing, and carry them the next morning to col. Romzey, who was to go to the duke with them, which he did, and on Saturday the 16th ditto, at the George and Vulture on Ludgate-hill, he brought us this account, that he was to wait

on the duke twice before he could speak with him, but at last did; that the duke's answer was, that all of them were things of moment, and that they could not be done without a parliament but must be left to them, that he would do what lay in his power towards the obtaining them, but there being word brought to one Lee, a dyer, in St. Giles Cripple-gate parish, that there was high treason sworn against him and Richard Goodenough, Goodenough would not come to us that night, so this only was concluded on, that we should meet on Monday at the Castle tavern, in Fleet-street, and that some time on Monday Mr. Lee and Mr. Wade should go to Mr. West's chamber to survey the map of the town to find fit places to meet in and give us an account at our meeting, but on Sunday they had an account all was discovered by one Keeling, whom they had some suspicion of some days before; upon Monday morning they met at captain Tracy's, where captain Walcot lodged, col. Romzey came to my house and gave Mr. Ferguson and me an account of it, and took me with him to captain Tracy's, where they consulted how to retrieve the business: Most were for pushing for it, and so to die with their swords in their hands; and another way was proposed I think by Mr. West, to kill Keeling and one Dr. Butler, which I think col. Romzey named, who was said to be the person brought Keeling in to discover, and that this would give them such a blow would make them afraid: The manner of taking Dr. Butler was to be thus: Some men to go to him (it was to be after the killing of Keeling) and undertake to give him an exact account of the murder and the rest of the plot, and so to meet at a tavern where was a convenient room for the purpose, and there to have assassinated him, but I left them in the dispute and went not again till morning; when I came there they were all gone but West, who told me that one Rumbald and others had been in company with Keeling all the day before, and he had persuaded them into a belief he had sworn nothing against any man, and so escaped from them, though this morning they found to the contrary.

At one time talking to Ferguson about this matter, he said nothing was to be expected from the rich old citizens, and therefore half-a-dozen of them must be taken out of their houses and hanged on their sign posts, and their houses given as plunder to the mobile, and that would scare the rest. Another time meeting Roe after the fire at Newmarket a great while, he began to talk of the design at Newmarket, which he declined when he found I was ignorant of it, but by him and others I understood afterwards that there was a consult several times at West's chamber against the life of his majesty, and that in order thereunto West had bought as many arms as cost about 100*l.* of a gunsmith in Shire-lane, but the fire happening prevented the design. Another time talking with Roe, he said there was no way like lopping, that was his majesty and his royal highness; to which I answered, I never approved of such ways, and that he might do it himself for me if he would have it done, upon which he replied he would be one with all his heart, and that it might be done through or over my lord of Bedford's wall as his majesty went to the play-house, or as he went to Hampton-court from Windsor. At another time I met West on the Exchange, and he told me the lords were all a parcel of rogues, and Ferguson a credulous fool, for that they would trick upon the Scots and us too, that he had laid out a parcel of money for arms, and that he could not get it again, which I told Ferguson when I saw him, but he said he should have it. Sometime after I met him in Lincoln's-inn-fields. and he told me that he had a note to one major Wildman, for the money, and that he would go for it next morning, which he did; but the major was gone out of town. Sometime after I went to Mr. Owen's in Bloomsbury, where Ferguson then lodged, and there I asked him about West's money, he told me he had given it himself, for it was sent to him just before Mr. West came in, and he had given it him. On Monday they met at captain Tracy's, Mr. West gave a note to one Tottle to go to the gunsmith to fetch the arms he had bought, lest they should be found there, and carry them to one of the plantations, I think New York, which Tottle did then proffer, if they would push for it he would not go his voyage, though I think he said his ship was at Gravesend, nor would he come alone, but undertake for 100 seamen and others presently.

The persons that used to come to Ferguson were sir Thomas Armstrong very often sometimes two or three times a day, colonel Romzey, captain Walcot, Mr. Wade, Mr. Norton, Richard Goodenough, Richard Nelthrop, Mr. West, Mr. Charleton with a wooden leg, Mr. John Freak, Mr. Blaney once or twice, Mr. Thomas Shepherd merchant, sir Robert Rich, John Starkey, Mr. Baily a Scotchman, and sir ——— Camel, and a great many more of his countrymen, and several from Wapping, all whom I know when I see, also Mr. John Ayloff used to come when he was in town.

Ferguson told me of a certain person of quality in that part of Ireland next Scotland that could raise twenty thousand men, and that he had promised it, I asked his name but he would not tell me; he told me it was Aaron Smith was sent to Scotland about this business, and that he had like to have spoiled all, but that the person to whom he carried the letter went to the council and shewed them a letter he had about some business of Carolina, and asked leave to come to London about it, and so got off this suspicion. ZEC. BOURNE.

July the 6th, 1683.

ZEC. BOURNE'S further Information.

That Mr. Baily the Scotchman sate up one night with Mr. Ferguson, and he went several

times with him to the duke, and the other lords, that Ferguson lodged at several places a few nights at a time and so to my house again, at one Mr. Bickerstaff, a sword cutler in Covent-Garden, at a German doctor's at the Green Posts in St. Martin's-lane, and Mr. Owen's in King-street in Bloomsbury.

That we met at the Salutation in Lombard-street by the persuasion of captain Walcot, for he said Mr. Thomas Shepherd would meet us there, he went out of town every night and so could not come further, that I have often carried letters to the Exchange to Mr. Shepherd from Ferguson, that he used to come often to my house to him, that I believe him to be the man was to return the ten thousand pound, for Ferguson told me he had a great correspondence with several merchants in Holland, and that he did return my lord Shaftsbury's money when he went over.

That captain Walcot would have spoke to one Mr. Collins an Anabaptist preacher (he preaches somewhere in Moorfields) that could assist us greatly, but they would not hear of it being a parson.

Mr. West told me that Mr. Aloff was at the buying the arms in Shear-lane, and if at the buying I suppose at the contriving the use for them, that two or three days before the discovery was made by Mr. Keeling, thinking the business was pretty ripe, Mr. Norton was desired to write to Mr. Ayloff to come to town which he did.

That Ferguson desired me to tell them one night when we met, that he must have a party to seize Mr. L'Estrange, for he should find strange papers, and that great care must be taken to secure the paper office at Whitehall.

ZEC. BOURNE.

That Ferguson told me that one Mr. Owen of Grays-Inn would give 100*l.* towards the design, and further he told me that he was the author of those two libels, viz. "A Letter "about the Black Box, and a Letter concern-"ing his Majesty's Declaration;" that as he walked in the fields at that time the discourse was about the black box, it came into his mind to write about it, which he did in an ale-house in Chancery-lane, and that afterwards when his majesty's declaration came out concerning the duke of Monmouth, he finding nobody took notice of it in print, resolved to write an answer to that, which he said he did as he lay in his bed one morning, and further told me he got one thrown on his majesty's hat as he walked on the terras walk at Windsor, and another laid under his pillow, but would not tell me who it was had so disposed of them two for him; and farther told me that the duke of Monmouth gave him fifty guineas for that piece of service, and so hath done every year since. Mr. Bethel that was sheriff of London was once at my house with Ferguson and had some private discourse with him.

ZEC. BOURNE.

The further EXAMINATION of ROBERT WEST of the Middle Temple, Barrister at Law.

This examinant upon further recollection saith that at the meeting for carrying on the assassination of the king and duke, it was resolved, that sir John Moor the late lord mayor of London should be killed, as well as the present lord mayor and sheriffs, and that if the people did not pull him in pieces, his skin should be flead off and stuft and hung up in Guild-Hall as one who betrayed the rights and privileges of the city.

And it was further resolved that Mr. Papillion, and Mr. Dubois should be declared sheriffs, and sir Thomas Gold or alderman Cornish (but this examinant thinks alderman Cornish was pitch'd on as the brisker man) to be lord mayor, and that they should be forced to take those offices upon them, and if they refused should be knocked on the head. And sir Robert Clayton and sir Patience Ward, who had behaved themselves like trimmers in their mayoralty, and neglected to repeal several by-laws whereby they might have prevented sir John Moor from being lord mayor, should be forced to appear publicly and own the fact, or else be knocked on the head.

And it was further proposed that most of the judges should be killed or brought to trial for their arbitrary judgments, and their skins stuft and hung up in Westminster-hall.

It was further said by colonel Rumzey to the best of this examinant's remembrance, that though he was not for shedding much blood, there would be a necessity of taking off some of the chief abhorrers and addressers in most counties, otherwise they would be making head, but this examinant was of opinion that a public declaration of safety to their persons and estates if they would submit, was a better expedient and would win more upon the people; and it was further resolved that some of the principal reputed pensioners in the late long parliament should be brought to trial and death, and that their skins should be stuft and hung up in the Parliament House as betrayers of the people, and of the trust. It was proposed that bishops, deans and chapters should be wholly laid aside, but no resolution was taken concerning their lands, because the present tenants might be induced to submit in hopes of preserving them, and would be sure to struggle if they saw they must lose them, and those who had those lands in the late times would be sure to engage in arms for us or submit in hopes of having those lands again. Some discourse was had of applying those revenues, and of one half or two thirds of the colleges in both Universities to public uses in ease of the people from taxes. It was further proposed that it should be publicly declared to the people that they should be eased of the chimney money, and have toleration in matters of religion, which was thought would engage all the meaner people; that England should be a free

port, and all strangers who would should be naturalized, which was looked upon as a means to engage foreigners on our side, that there should be no taxes for the future but the excise and land-taxes, which should be appropriated to the particular uses, and all forfeited estates should be applied so too.

And this examinant further saith that this examinant enquiring of Ferguson what fund of money was provided, it was answered by him and colonel Romzey, that if the business were done and backt with success, there could be no want of money, there would be half a year's revenue of the chimney money then due besides what the Excise-office and Custom-house would afford, and that there was money and plate enough among the bankers and goldsmiths which must be taken up upon public faith if there were occasion, and be punctually repaid again for the reputation of the cause.

And this examinant further saith that when Walcot agreed to engage in the said action, he desired his name might be concealed whatsoever the effect of it proved, whereupon Ferguson replied no man ought to be ashamed of it, for it is a glorious action, and such as I hope to see rewarded by a parliament, and that the actors in it shall have statues erected to them with inscriptions of Liberatores Patriæ.

And this examinant further saith that he acquainted Mr. Thomas Shepard merchant that this examinant had provided arms in his former examination mentioned, and that Ferguson promised to see for a conveniency of committing the assassination between Hampton-Court and Windsor.

And this examinant further saith that Mr. Bourn a brewer between Great Queen-street, and Parker-lane, was acquainted with the intended insurrections, and hath talked with this examinant about them, and declared himself ready to engage in an insurrection, but not in the assassination, and the said Bourn was knowing of the arms bought by this examinant but was not at the meeting when they were agreed to be bespoken, and this examinant believes he acquainted Mr. Carleton Whitlock, Mr. Edmund Waller both of the Middle Temple, and Mr. Holford of Chancery-lane, of the intended assassination and insurrection in November, but he did not do so till after the time for execution was past: and further saith, that in the beginning of October last this examinant met with colonel Sidney at Uxbridge, where the said colonel told this examinant that many tricks had been played in the scrutiny of the poll for the lord mayor, and that sir William Pritchard was declared though not duly chosen, but said he, all that I can say to it is what a justice of peace of Essex said lately to a country fellow brought before him for killing a highwayman that would have robbed him; friend, says the justice, you have done well, but you might have been robbed if you would; and so we may be inslaved if we will, or else need not, or he used words to that purpose, but this examinant to the best of his remembrance never spake to the said colonel since.

ROB. WEST.

The further EXAMINATION of ROBERT WEST of the Middle Temple, Barrister at Law.

This examinant upon further recollection saith that Richard Goodenough and Francis Goodenough formerly offered to act in the intended assassinaton of the king and duke, if a sufficient number of men could not be got to do it, but afterwards believing there were men enough besides, they both declined it.

And this examinant further saith, that at some of the meetings concerning the said assassination, colonel Rumzey said it would be very convenient to take off colonel Legg the now lord Dartmouth, for he was a stout man and of desperate courage, and believed if he could get into the Tower, would in revenge fire all the gunpowder in the White Tower, which would endanger the whole city. And it was said concerning the lady Anne, daughter to the duke of York, that it would be best to marry her to some small country gentleman, and have a breed only to keep out any foreign pretenders to the crown; and at one of the said meetings, when it was discoursed whether the king or duke should be killed singly, it was agreed, that Rumbold should send out a spy before, who by some signs should give an account at a distance whether the king and duke were both together or not, and at one of the said meetings when it was designed that it would be convenient to take off some of the chief ministers of state, as the Lord Keeper, lord Hallifax, lord Hyde, Richard Goodenough said, take the Keeper prisoner, and try him at Oxford for the death of Colledge, and hang him upon the same post on which Colledge was hanged.

And at one of the said meetings this examinant saying he was well enough armed for one, for he had a good musket blunderbuss and case of pistols, the said Rumbold desired to see them, and finding them very good said he believed he must use the blunderbuss in the assassination, and told Ferguson he must consecrate it if he should use it.

And this examinant saith that at one of the said meetings, this examinant was appointed to speak to one captain Bon a seaman at Ratcliff to undertake the raising a body of seamen to surprize the Tower in case the assassination had been committed, and this examinant accordingly proposed to the said Bon whether he would undertake to do so; but the said Bon replied he was going to settle in America where he was born, and did not care to be concerned, and feared he had not interest enough amongst the seamen if he would, which this examinant reported to the next meeting, and the said Bon is since gone to live in New-England where he was born, or in New-Jersey.

And this examinant further saith that Richard Goodenough told this examinant that he

had spoken to one Mr. Grange a brewer in Westminster to try what men could be raised in Westminster for carrying on the last design of raising 3,000 men out of the city and suburbs, and also spoken to one Barnes a hatter in Fleet-street to try what men might be raised thereabout, but this examinant never spake to either of the said parties about it, neither doth this examinant know nor hath heard what other persons were employed by Goodenough or any other person in that design, and further saith not. ROB. WEST.

The further EXAMINATION of ROBERT WEST of the Middle-Temple, Barrister at Law.

This examinant upon further recollection saith that when the insurrection intended in November last was resolved on and Walcot agreed to engage in it, the said Walcot desired this examinant to lend him some of this examinant's suit of silk armour, viz. a back, breast and head-piece, and afterward asked this examinant to take some command of horse under him to engage some young men of the Temple, telling this examinant he could make this examinant a sufficient officer in two or three days time, but this examinant refused to engage himself or his friends either, though he offered the said Walcot the use of his armour.

And this examinant further saith that when the arms in his former examinations mentioned were ordered to be bespoke, it was also proposed that Ferguson shall provide the 600*l.* he pretended to have ready for that purpose to buy horses, which should be kept at livery stables in the names of private gentlemen, and be always in a readiness to be made use of as any opportunity for an assassination or other occasion should offer, and the night or two before they were to be used should seemingly be brought out of the livery stables by men to be employed for that purpose, but Ferguson not bringing the money no horses were bought.

And this examinant further saith that after the treaty with the Scots seemed to be at an end, and the 10,000*l.* not like to be had, Ferguson told this examinant that the duke of Monmouth was willing to speak with this examinant and Goodenough to consider what ought to be done in the city and suburbs, and to leave the lords and other people (by which this examinant supposes he meant the lords Grey and Russel, Sidney and Wildman) but this examinant refused to go to the duke or to sir Thomas Armstrong, and knows not whether Goodenough went to the duke, though he did go to Armstrong.

And Ferguson likewise told this examinant, that if the English would not agree to stir, it was his opinion and the opinion of many of the duke's friends, and of the Scotch gentlemen that were here, that the duke should go to Scotland and head the Scots there; whereupon Mr. Wade who was then present said, If the duke did go thither he would wait upon him in the expedition as a volunteer.

And this examinant further saith, That at some meeting for the carrying on the intended assassination, Ferguson said the king went frequently in the night across St. James's Park in a chair without any attendance, and that it would be easy for two men with swords barely to dispatch him and make their escape; whereupon col. Romzey said it was a strange thing to him, that the great men who were so desirous to have the business done, should not make a purse and buy some good office at court for some man whom they could trust, who should roar loud of the duke of Monmouth and the Whigs, and by that means get into reputation and trust, and should observe and give an account of the king's and duke's walks and hours and any journeys they designed; and the said colonel said he had told Armstrong so and bad him tell his lords.

And this examinant further saith that about the time the insurrection intended in November last was carrying on this examinant observed the lord Howard of Escrick and Walcot to be very intimate and often together, and the said Walcot told this examinant that the lord Howard was as right as any man for the business and as forward to engage, but this examinant doth not remember that he ever spoke with the lord Howard himself about that insurrection. And further saith Mr. Roe told this examinant that Gibbons the duke of Monmouth's servant offered to be one to commit the assassination of the king and duke, and further saith not.

ROB. WEST.

The further EXAMINATION of ROBERT WEST of the Middle Temple, Barrister at Law.

This examinant further saith, That after Ferguson had told this examinant that a sum of money for carrying on the assassination of the king and duke in October last was paid to a certain person who never returned it, of which the lord Shaftsbury complained: the said Ferguson at another time a little before the discovery told this examinant that Richard Goodenough was the person to whom that money was paid, and that he called Ferguson fool for returning some money he had received for the same purpose, and col. Romzey told this examinant that Mr. Charleton paid that money.

And this examinant further saith that when Mr. Goodenough told this examinant that he would speak to Hone the joiner to be one of the assassinates, he said he would first try him whether he would undertake an attempt upon the duke of York before he would break the whole business to him; and as he found him willing to that he would proceed. And this examinant believes Mr. Goodenough did accordingly, for that the said Hone coming to this examinant's chamber soon after, and being asked by this examinant whether he had lately seen Mr. Goodenough? The said Hone an-

swered he had, and talked with him about a job upon the duke of York: and this examinant asking him whether they were agreed? Hone replied yes, but this examinant doth not remember that Hone then mentioned the king or any name or description implying the king. And about five or six weeks since the said Hone came to this examinant's chamber about a small alteration this examinant designed to make in his chamber, and then the said Hone asked this examinant, Master, will nothing be done? To which this examinant answering he believed not, the said Hone replied, if this duke of Monmouth would be true and appear openly, I could bring 50 or 60 honest fellows from our side of the water (meaning Southwark) who would be ready for business as well as myself, and this examinant asking him what business? Hone replied any business, either a brisk push (by which this examinant supposed he meant a general insurrection) or the other trick or job of taking off the two brothers, the captain and lieutenant, which were two names used for the king and duke.

And this examinant further saith that when the discourse was had concerning the killing the ministers of state, colonel Romzey said, the lord Halifax was one of the greatest rogues, and deserved it more than any man, for he professing himself formerly of our party knows our weakness and divisions and hath exposed us and made the court venture upon things which they would never have done otherwise. And when Goodenough proposed that the Lord Keeper should be hanged where Colledge was hanged, this examinant having an opinion that the Lord Keeper was an enemy to this examinant and had used him very hardly in a cause this examinant lately had in Chancery, this examinant desired that he might have the custody of the said Lord Keeper a little while to make him sensible of his unkindness to this examinant, but this examinant never designed or desired to kill the said Lord Keeper or any other person, nor would have had his hands in any man's blood.

And this examinant further saith that Ferguson lately told this examinant that Mr. Cromwell, son of Richard Cromwell, who usually goes by the name of Mr. Cranbourn, was so vain as to endeavour to make a party for himself or his father in the city: and Goodenough formerly, viz. about Christmas last told this examinant that he believed the said Mr. Cromwell and Mr. Ireton the son of lieutenant general Ireton would assist in the intended assassination of the king and duke in person.

And this examinant further saith, that Mr. Goodenough told this examinant that he had spoken to one Partridge a shoemaker and almanack-maker in Covent-Garden to act in this assassination, and that the said Partridge offered to join in it if it were to be done in town, but was not able to ride, and therefore would not join in the attempt out of London: And further said that the said Partridge had erected several schemes and thereby found the duke of York would scarce out-live March or April, and that the king was under an ill direction too, and the people would be victorious. And Mr. Ryley told this examinant the same thing as to the schemes erected by Partridge.

And this examinant further saith that col. Romzey told this examinant that when Mr. Trenchard refused to go into the west and raise a force for the intended insurrection in November last, the said Mr. Trenchard was sent for to the duke of Monmouth's house about it, and there were present the said duke, the lord Gray and col. Romzey: And further told this examinant that the lord Russel had prepared to go the then next morning to his post which was somewhere in the west, but this examinant doth not remember the place.

And this examinant further saith that after the discovery, Walcot told this examinant, col. Romzey, Wade, Norton, Nelthrop, Goodenough and Ferguson, that notwithstanding the said discovery he was persuaded God would yet deliver this nation, but he did not approve of the present instruments who had undertaken it, or used words to that purpose.

And this examinant further saith that he having a son lately born desired col. Romzey to be godfather, who said he would not, except he might name him Brutus, but was afterwards prevailed with to do that office, and gave the name of John to the child being the said colonel's own christian name.

ROB. WEST.

The further INFORMATION of ROBERT WEST of the Middle Temple, Barrister at Law.

This examinant upon further recollection saith, that Ferguson formerly, viz. soon after his return from Holland, told this examinant that Dr. Owen and one Mr. Collins either an anabaptist or independent preacher were the most sensible ministers about the town, and were both of opinion that the intended assassination and insurrection were both lawful and necessary, and that colonel Owen, Dr. Owen's brother, was privy to them and joined with colonel Sidney and major Wildman in the management of the treaty with the Scots, and that one Mr Mead a nonconformist minister was zealous in the business of an insurrection, but was not for beginning it in London, and Mr. Nelthrop told this examinant the same thing of Mead, and that he was able to raise 1,000 men or more.

And this examinant further saith that Mr. Nelthrop told this examinant that in case of an insurrection which he much desired, he would go along with the lord Russel wheresoever he took his post and would furnish out himself and a man with able horses and arms and a good sum of money.

And this examinant further saith, that upon a discourse with colonel Romzey concerning a general insurrection, the said colonel told this examinant that if he could have 1,000 resolute

fellows to follow him and another 1,000 men to secure him at his back, he would undertake to drive the king, all the court and the guards out of town so as they should not dare to look back till they were fled to Windsor.

And this examinant further saith that the money which this examinant received from Ferguson amounting to something more than the arms bought by this examinant cost, this examinant by the direction of colonel Romzey paid 5*l.* to Mr. Wade to give to one Manning who was to have been one of the assassinates, and also in the last designed insurrection to pay some debts which Manning owed, and the said colonel Romzey, Mr. Wade and Mr. Norton gave Manning a guinea or 20*s.* apiece more. And the said Wade asking this examinant whether he would personally engage in the last intended insurrection, and this examinant saying his infirm constitution was not able to bear the toil of a soldier's life, Mr. Wade told this examinant, then he must fit out some men that would, and that this examinant should give his blunderbuss to Manning who was a strong stout fellow able to carry it, which this examinant agreed to, and to fit out two foot soldiers, or do any thing else was fit for him to do.

And this examinant further saith that at one of the last meetings for raising 3,000 men out of the city and suburbs, Mr. Bourn reported he had communicated the business to Mr. Lobb a nonconformist parson, who had a congregation of poor zealous men, and that Mr. Lobb embraced it readily, and promised to employ two trusty men of his congregation to go amongst the rest and engage as many as they could. And this examinant further saith, that Ferguson had four several lodgings during this examinant's correspondence with him, at three of which this examinant visited him, viz. at Mr. Bourn's the brewer, at Mr. Owen's a lawyer living at the further end of King-street in New-Southampton buildings, and at a cutler's over against Will's coffee-house in Covent-Garden, his fourth lodging was in St. Martin's-lane in the fields at a Dutch Doctor's, or German quack's, which this examinant never was at, and knows not the name of.

And this examinant further saith that colonel Romzey discoursing with this examinant further concerning the duke of Monmouth, told this examinant the duke was inclinable to answer the people's expectations, and to submit to be little more than a duke of Venice, but the lords about him and Armstrong designed great offices to themselves, and will not endure to hear of terms, but cry all shall be left to a parliament, whereupon this examinant saying to him, it were but just to discover all their intrigues, but the being an informer is an ugly thing, colonel Romzey replyed, it is true our people are not worth venturing for, and the other people are not worth saving, besides it would give a great blow to the Protestant interest all the world over. And further saith not.

ROBERT WEST.

The EXAMINATION of WILLIAM HONE, Joiner, taken before Sir William Turner Knight and Alderman of the City of London, and one of his Majesty's Justices of the Peace the 4th day of July, 1683.

This examinant saith that about the fire time at Newmarket Mr. Richard Goodenough came to him to Clifford's-Inn where he was at work at one Mr. Cark's chamber, and asked him to go along with him and told him he wanted some labourers; this examinant then asked him if it were honest? Upon which Mr. Goodenough clucht his fist and struck it towards his mouth twice or thrice and told him it was to seize the king and the duke, and that there would be 20*l.* apiece to buy horse and arms. This examinant then told him he was well settled in his trade and did not care to trouble himself He then further told this examinant that they had taken care to secure the city, and then they appointed to meet the next day at the Amsterdam coffee-house, where they met together, and from thence they two went to one Sergeants a Cook's-shop at the sign of the Roe-buck at the corner of Bartholomew-lane where they dined, and whilst they were there, there came in one Keeling and one Rombald who had but one eye, and after some discourse Mr. Keeling said let us go, and Mr. Goodenough said we want clothes, Mr. Keeling replied he had clothes for half a dozen, and further said let us make what we can and go, Mr. Goodenough answered no, and pointing to Rombald said, there is one knows the temper of the people better. This examinant further saith that Mr. Goodenough, Mr. Rombald and Mr. Keeling went from thence to a tavern in Bartholomew-lane where this examinant came to them, but heard no discourse at that time, but drank and went his way.

This examinant further saith that a fortnight after Whitsuntide he met Mr. Joseph Keeling and his brother in Threadneedle-street near the Exchange and they would needs drink with him, and he went with them to the Flanders coffee-house, and then Mr. Josias Keeling told him his brother was a stout man and could bring together 30 men for his share, and then they went all three into a room above-stairs, and then Mr. Josias Keeling said these words to him, You know the business of the Rye, this examinant at that time knew the meaning of the Rye, but not the place they called the Rye: And they being three together they fell into discourse concerning the king and the duke of York, and how they should dispose of them and depose the king, and they being hot in this discourse this examinant said he was for saving the duke and securing the king, afterwards the two Keelings sent this examinant to look for Goodenough and told him they must needs speak with him presently, and after this examinant had been from place to place to find him, and missing of him he returned back to the tavern where he found the said two Keelings and Goodenough and some others who this

examinant doth not know; and there the said Goodenough and both the said Keelings retired into a private room, but what passed between them this examinant doth not know, neither hath he seen them since. This examinant further saith that about Michaelmas last was twelve month as he remembers Mr. Goodenough spoke to him to make a private place between his roof and the ceiling joists of his house with intent as he told this examinant to put money in it because the times were dangerous. So this examinant cut the rafters and untiled part of the house, and made such a private place, and made a frame and a door for a man to go in, and the bricklayer tiled it over and over the door, but what use the said Goodenough afterward made of it this examinant knows not. This examinant saith that the persons engaged in this conspiracy are Mr. Richard and Francis Goodenough, Mr. Robert West, the two Rombalds, and one Adderton a glazier, and Lee a dyer, and both the Keelings, and a crape-weaver who lives about Chiswell-street.

This examinant saith that he hath worked for the said Mr. West at his chamber in the Temple, and one day meeting him in Fleet-street he asked this examinant if the ball were once up whether gamesters would come in in four or five hours time? This examinant replied he thought they would. And at another time being at work at his chamber they fell into discourse together concerning the deposing of the king and the duke, and words to that purpose, but what the particular words were he doth not well remember. This examinant saith that to the best of his remembrance as he was drinking with Mr. Lee at the King's-head tavern in Chancery-lane about a fortnight after Whitsuntide last, the said Mr. Lee told him there was a captain of a ship would appoint the hurling of a silver ball at Blackheath, which would draw a great company of people together, and then he would give them brandy, and then they would go and seize on the Tower.

This examinant further saith that he being at work at one Mr. Percival's at Chippenham where the said Adderton the glazier was also taking order to work, the said Adderton asked this examinant if Mr. Goodenough had said any thing to him about the business? This examinant asked him what business? The said Adderton replied he had told Lee of it, and that was all passed between them. WILL. HONE.

Capt. et Cognit. Coram me Die
et Anno præsen. WILL. TURNER.

INFORMATION of WILLIAM LEIGH.

I do declare that my first acquaintance with Mr. Rowse and Mr. Lee was by reason of captain Blagg and his business, to go his mate, and the first time that ever Mr. Rowse spoke any thing to me about the plot, was one day I met him by the Exchange; he told me he had something to say to me; and to the best of my remembrance he asked me presently after, if I did know of any seamen that were fitting to make captains in Wapping: I told him No, but I would see what I could do; and he promised, he and Mr. Lee to come to the Blue Anchor by Wapping dock next morning about ten o'clock, but came not: Another day, he and Mr. Lee came down and discoursed with some of Mr. Rowse's friends that he met, but they did not like his way and so parted.

And the first time that ever I heard of tossing up a ball was by captain Blagg, but I do declare I knew not the meaning of it till Mr. Lee and Mr. Rowse asked me about taking the Tower; and whereas he or Mr. Lee or Mr. Rowse, or both, asked me about tossing up of a ball, as I take it on Black Heath: I asked what they would do there? They told me there was some hundreds of horse ready in the country; and as for captain Blagg, I heard him say that mortar-pieces over Southwark side would be the best way for the taking of the Tower; and I have heard him say, as near as I can remember, he could raise some seamen, but the number I have forgot; and all that Mr. Lee spoke before the king and council in my hearing was true. All this I am willing to attest; and for knowing of any others besides Mr. Lee and Mr. Rowse and captain Blagg to be concerned in this plot, I know not, neither can I call to mind any words spoken by any but those three. WILLIAM LEIGH.

The further INFORMATION of WILLIAM LEIGH.

Shall it please your majesty; Since I sent in my paper, I have sent something more which came in my mind since, That is about getting some seamen that might be fitting to go commanders or captains of ships; and as he asked if I could not get two or three; sometime afterwards I did enquire what he would do with them, he told me to make masters of ships. I asked for what end? He told me to put in ships at Deptford or Woolwich, that is men of war to make guard ships to stop all going and coming. I did ask him what he would do with them when there was no guns nor powder nor shot on board; but I told him if he had the Tower then he might do something: but his answer was, if not then, some time after that, says he, Mr. Rous by name, we must secure the Tower and White-hall both together, or else there could be nothing done: for, says he, we must take the king and then our work is done, to the best of my remembrance: I asked what was then his oath of allegiance? He told me if they had the king he should be king still, but fight under his commission. I do think Mr. Lee was there present. WILL. LEIGH.

INFORMATION of the Lord HOWARD to the King, the 11th of July, 1683.

The First Part of my Narrative; being a summary Account of all that occurred to my

knowledge from September 29, 1682, to the time of the earl of Shaftesbury's Death:—

About the middle of September 1682, I had occasion to go to a small estate at Tolibury in the country of Essex, where I continued about a fortnight waiting to hear of the ultimate issue and result of the long contested election of the sheriffs of London, which was shortly to receive a final determination by the swearing of the new sheriffs into their office.

During which time of my continuance in the country I received two or three letters from captain Walcot, importing in a mysterious stile, well enough understood by me, that the matters of negotiation betwixt me and the merchant my correspondent were brought to a good conclusion, and that my presence was speedily desired for the better perfecting the same.

Upon the 29th of September (being the day which put an end to the long dispute about the sheriffs) I returned to my house at Knightsbridge, where I had not been above two or three days before I received a visit from captain Walcot, who acquainted me that the earl of Shaftesbury had withdrawn himself from his own house into a retirement in the city, where (though he was secreted from most of his friends yet) he desired to see me, for which purpose his lordship had sent him to me to shew me the way to his lodging.

I presently closed with the invitation, and went along with him to one Mr. Watson's house about the further end of Woodstreet (reckoning from Cheapside) where I found his lordship alone, who immediately begun to advise me in this manner, viz.

That finding the due election of the city frustrated by the Pseudo-sheriffs forcibly obtruded upon them, he could no longer think himself safe (though innocent) in the future administration of justice, which must hereafter be expected to be wrested by such ministers to the humour of the court, but this danger threatened not him only, but me also, and all honest men in England, in the sense whereof he had thought it necessary for him (and believed it no less necessary for me) to withdraw himself into the city, where he had made such preparations (meeting with a disposed matter) that he did not doubt but in a short time he should be able to reduce things to a better posture: that in order hereunto there were several thousands (I think he mentioned 10,000) who were ready upon notice given to betake themselves to arms. First to make themselves masters of the city, and afterward sally out and attack the guards at White-hall, that they were to be assisted with about 1,000 or 1,200 horse to be drawn insensibly into town from several adjacent parts of the country under the conduct of several good officers, amongst whom he made mention of Major Bremen (and of him only) but there was nothing hindered the putting of this into speedy execution but the backwardness of the duke of Monmouth and the lord Russel (to whom were affixt the lord Grey, the lord Brandon, sir Henry Ingoldsby, and several other gentlemen who would not stir without the duke) who had unhandsomely failed him after their promise given him to be concurrent with him in the like undertaking (at the same time) in Devonshire, Somersetshire, Cheshire, Lancashire, and other counties to give variety of diversion to the standing forces; that the lord Grey seemed to be more forward then than the rest to join with him, with whom (if he could be gained) he intended to couple me for the raising of Essex, and that lord Herbert and colonel Romzey would be assistant to him in the conduct of the city affairs, together with very many eminent citizens who desired to have their names spared till the time of action, with many other particulars too long to be enumerated in this short summary.

To all this I answered, that I was glad to hear and was willing to take it upon his credit, that the city was in as great a readiness for action as he had exprest; and that there would be so considerable a body of horse brought out of the country for their aid as he had intimated, nor did I doubt but he had prudently provided for all the requisites to so great an undertaking. But withal that I could not but be much surprized to hear that there should be so great a misunderstanding betwixt him and those noble lords whose concurrence I thought absolutely necessary for so great a work, that if they had failed him (as he had related) after an appointment made, they had acted very unsuitably to the character they bore, and would deservedly forfeit the opinion was had of them, that I must be allowed the liberty to discourse with them about it and till then suspend as well my censure of them as the resignation of myself to him in the matters propounded by him; upon these terms I parted from him promising to see him again within a day or two.

The next day I went to Moor-Park, where the duke of Monmouth then was, and in short acquainted him with what I had heard, as well concerning himself as the lord Russel, &c. He absolutely denied that he, or (as he believed) my lord Russel had ever made any such appointment with my lord Shaftesbury, that they were altogether ignorant of what was doing by the said earl, who for some time (upon what capricio he knew not) had withdrawn himself from them and acted upon separate councils of his own, grounded (as he feared) upon the hasty conceptions of some hot-headed men, who might lead him into some untimely undertaking which in all probability would prove fatal to himself and all the party: for prevention of which he said he would be glad (if he knew where) to give him a meeting, and to resettle a better understanding with him.

Having had this account from the duke, I made a second visit the next day (being Thursday the 3d or 4th of October) to the said earl, to whom I communicated what had passed the day before betwixt the duke and me, and thereupon took occasion to strengthen myself with arguments of the absolute necessity of a speedy con-

ference betwixt him and the other lords well for the removing the present misapprehensions they had of each other, as also for the consolidating them into such an union and concert of councils as might render them all jointly helpful to the common interest by an harmonious and uniform acting to the same end in which they did all agree however they might differ in the means. This I urged upon him with all the vehemency that the nature and importance of the thing require, but he still persisted in a refusal of a meeting, saying with some more than ordinary warmth, that he had long discovered in the duke a backwardness to action, by which they had lost great opportunities, that he had cause to suspect that this artificial dilatoriness of the duke proceeded from a private agreement betwixt his father and him to save one another. That people (so he termed that imaginary army in the city) were impatient of longer delays, having advanced so far already that they could not safely retreat: the intention of an insurrection being communicated to so many that it was morally impossible to keep it from taking air if it was not speedily brought into act, that one of his friends (whom I afterwards understood to be Rombald) had drawn almost an hundred horse into London by small and unobservable parties a little before Michaelmas day, who (after they had continued here a good while at their expence) were again retired to their respective places of abode; that such frequent disappointments would weary the party and flat their spirits and make them at last resolve to sit down in a total despondency; but it was much to be feared the duke acted with a prospect very different from theirs, he designing nothing more than the advancing himself whilst they could not hope that ever their liberties should be well secured for the future, but under the government of a commonwealth: that for these reasons he was fully determined to be no longer expectant upon the duke's motions, but would pursue his former intentions of attempting the deliverance of his country by the help of an honest brisk party in the city, with whom if the rest of the lords would be co-operating they might share with him in the glory of so honourable an undertaking, but if they would not he hoped he should be able to effect the work without them.

July 11, 1683. HOWARD.

This was the substance of the second Conference I had with him, which I reported the next day to the duke, who desired me to make one assay more to procure an interview.

This occasioned my going to the said earl a third time upon Saturday the 5th or 6th of October, at which time I did prevail with him to give me a promise of meeting the duke and my lord Russel the next day in the evening, but instead of coming, he sent his excuse both to the duke and me, the next morning by colonel Romsey, and straightway removed to another lodgings, where he continued to secret himself till the time of his departure out of England.

During the time of his concealment, divers intimations were given, some to me by captain Walcot, others by others to the duke of days appointed for their intended insurrections; one appointment was about the latter end of October at which time the king's return from Newmarket was expected; but this was prevented by the duke, who prevailed with them to put it off to a longer day in expectation of a concurrence of the country with them.

This adjournment (as I remember) was for a fortnight, at which time returns from the country gave discouragement to the proceedings.

After this the second of November was made a day peremptory, as I have been informed, but that also was put off I know not upon what disappointment, which often failures caused the said earl to take resolutions of conveying himself beyond the seas, which he did accordingly.

Whilst these things were in agitation, I have several times had some dark hints given me from captain Walcot, from Goodenough, from West, from Ferguson, of striking at the head, of shortening the work by removing two persons, by which I did apprehend that there was a design of making some attempt upon the king and the duke, or one of them; but when and where, and by whom, and in what manner and place this was to be acted, I never saw.

This ends the transactions during the life of the earl of Shaftsbury, the rest shall be made a second part. HOWARD.

July 11, 1683.

A Continuation of my former Narrative.

After the death of the earl of Shaftsbury, it was considered, That as there had appeared both in city and country a very prompt and forward disposition to action; so it might justly be feared that either the minds of men might (in time) stagnate into a dull inactivity, unless proper acts were used to keep up the fermentation, or (which was equally dangerous) that the unadvised passions of a multitude might precipitate them into some rash and ill-guided undertakings, unless they were under the steering and direction of some steady and skilful hand. For prevention of both these evils, it was thought necessary that some few persons should be united into a cabal or council, which should be as a concealed spring both to give and to guide the motion of the machine.

The persons designed to this general care were the duke of Monmouth, the lord Russel, the earl of Essex, Mr. Algernoon Sidney, Mr. Hambden junior, and another whose abilities and qualifications did in no degree fit him for such a province.

The first meeting of these six was about the middle of January at Mr. Hambden's house; at which consultation there was only propounded some general heads, which were afterwards

(upon more mature thoughts) to be debated, viz. Where the insurrection should be first made, whether in the city or in the more remote parts of the country, or in both at the same instant; what counties were thought to be best disposed to, and best fitted for this enterprize; what persons in the respective counties were the most useful and most ready to be engaged; what towns easiest to be gained, and the most proper for a general rendezvous; what arms were necessary to be provided, how to be got, where to be disposed, what sum of money was of absolute necessity to answer public occasions; how and by what methods such a sum of money was to be raised so as not to draw into observation, nor to administer occasion of jealousy: and lastly, which was the principal and thought to challenge the chiefest care, how Scotland might be drawn into a concert with England, and which persons there fittest to be consulted withal about this matter.

This was the sum of that day's Conference.

The second meeting was about 10 days after, at the lord Russel's house, where were present every one of the foresaid six.

At this meeting it was propounded that a speedy understanding should be settled with the lord Argile, and that in order thereunto some fit person or persons should be thought of to be sent to him, and to be a constant medium of correspondence betwixt him and them; that care should be taken to be rightly informed of a true state of Scotland, of the general bent and inclination of the people, of the capacities or incapacities they were under, and that some trusty messenger should be forthwith dispatched thither to invite two or three of the most valuable gentlemen of that country into England to the end they might be advised with about the general design.

The persons nominated to be called into England, were the lord Melvin, sir John Cockran, and I remember another gentleman of the family and alliance of the lord Argile, who (if I mistake not) was of the same name also, and a knight, but of this I retain but an indistinct remembrance.

Some other things were considered of, but of no great moment.

At the conclusion of this meeting it was agreed, that there should not be any other meeting of this cabal (unless in case of some extraordinary emergency) until the return of the messenger sent from hence, and the arrival of the foresaid gentlemen out of Scotland.

This affording a kind of vacation I soon after went into Essex, whither I was called by the concerns of my estate, after that I went to Bath whither I was enforced to go by the infirmity of my health, so that what was done or argued on after this, I can give no account but by hearsay. HOWARD.

July 11, 1683.

A SUPPLEMENT of some things which (upon recollection) have occurred to my memory since my former Information.

I remember that my lord Shaftesbury complaining of divers persons who had deserted him and fell short of their engagements to him, amongst the rest named his cousin Charleton (meaning Mr. Charleton of Totteridge) who (he said) had promised and was able to bring in great assistance to him, upon which he did much rely, but was quite fallen from him, and had so wholly attached thimself to the duke of Monmouth and my lord Russel that he would act only by their measure.

Speaking also of major Wildman, He said that he was very forward in the work, and very active in it; and being told by me, that amongst other things which were wanting in such enterprize, the want of some great guns seemed to me not to be the least. He told me that they should be furnished with two drakes by a friend (whom he did not name) which two drakes I have since thought may be those two small pieces found with major Wildman.

The person mentioned in my former narrative who (as my lord Shaftesbury said) had offered to kill the duke with his own hands, I do now distinctly remember to be Mr. John Ayloffe, to whom he answered, No, Jack, thou shalt not kill him till we have an armed force to justify it.

About the 10th or 12th of October after a stop put to the then intended insurrection, the duke of Monmouth told me that he had seriously thought of it (meaning the insurrection) and that after divers ways proposed and seriously considered of he was clearly of opinion that there was nothing so easy to be accomplished, nor so probable to do the work effectually as to fall in upon the king at Newmarket with a smart party of horse of about 40 or 50, which he said he could soon have in a readiness. To which I answered, That I was of the same opinion, but whether or not it would be decent for him to appear in person in an attack to be made when the king was in person deserved his consideration. Two days after I spoke to him of it again, and asked him what thought he had of it; he answered me that it could not be brought about soon enough. After which I never discoursed more with him about it; but upon reflection I am apt to think that from this time and not before the design of way-laying the king in his return to London was first meditated, and I am the more confirmed in this opinion from the consideration of the behaviour of the duke of Monmouth and lord Grey, who seemed to be very big of expectation of some great thing to be attempted upon the day of the king's coming from Newmarket, upon which day (as I have before observed) sir T. Armstrong was not to be found till the king's coaches were come in town, and I do verily believe he was to have headed the party. To this also may be added, That the duke of Monmouth within few days

after told me that he had that day given order to have his horses carried into London to have been in a readiness to have mounted upon any emergency.

I do further call to mind, That there is a considerable person living in Spittle-fields whom I very well know, and have often been in his company (but cannot remember his name distinctly) this man I have been told did undertake to bring in 2 or 300 men upon the strength of his own interest when occasion should require; he is well known to Mr. West.

HOWARD.

Further INFORMATION of Colonel ROMZEY, June 11, 1684.

Sir Thomas Armstrong was at the meeting at Mr. Shepard's when I was there, and was one that undertook to view the Savoy and Mews to see in what posture the soldiers were, and how easy or difficult it would be to surprize them.

Sir Thomas Armstrong did tell me that Gibbons came to him and acquainted him that Mr. Roe and he had been to see the earl of Bedford's garden and told him that was a fit place to take off the king and duke at, but in other terms which now I have forgot.

Sir Thomas Armstrong did come to me the Sunday night after the fire at Newmarket, and told me that he just came from Ferguson, and that notwithstanding they returned so soon, Ferguson did not doubt to have men ready by that time to do the business, and desired me to go with him to Ferguson's lodging in his coach which I did, when I came there Ferguson told me the same but that they wanted money, Mr. Charleton not being to be found, upon which sir Thomas desired me to lend some and he would see me repaid, and said if he had been in stock he would have done it himself; upon their persuasion I went to my house I think in sir Thomas's coach and brought 40 guineas; he again repeated that he would see me repaid; several times after he told me Ferguson had my money and wondered I would not go to him to receive it.

After the discovery sir Thomas came one night and told me he wondered I was not gone, and did importune me to be gone with the first and in the mean time to keep close, for that I was mightily hunted after.

J. ROMZEY.

A LETTER from sir WILLIAM STAPLETON, Governor of the Leeward Islands, to sir LEOLINE JENKINS.

Nevis, Jan. 25th, 1685.

Right Honourable; What now offers to inform your honour is that having seen the king's proclamation and a list in print of the conspirators in the last most detestable plot; I found one James Holloway merchant therein specified fled and indicted, who went by another name, viz. John Milward, whom I have caused to be secured in order to send him home by the next good opportunity, which is by one captain John Wilkinson commander of the ship Joseph of London, a good sailer.

WILLIAM STAPLETON.

The INFORMATION of JAMES HOLLOWAY. Read the 11th of April, 1684.

Great Sir; I your majesty's most humble, but too much misled, and disobedient subject do here most faithfully, according to the best of my remembrance, give you an account of what I knew concerning the late discovered conspiracy, how I came to be concerned, how far I was concerned; how it was to have been carried on in Bristol: why I did not come in at the first discovery, and cast myself at your majesty's feet for mercy; how I made my escape, and where I was till taken. If I shall through forgetfulness omit any thing that it may be thought I am privy to, I shall be ready and willing truly to answer any question that shall be asked by your majesty, or any your most honourable privy-council, no way despairing of your majesty's mercy, but remain in hopes that that fountain of mercy which hath so abundantly flowed from your sacred breast ever since your happy restoration is not yet dry, and that there is some drops left for me, who doubt not but to serve your majesty both at home and abroad, much more living than my death will.

That which I have cause to impute the occasion of my being concerned, was my too public spirit, preferring your majesty's and my country's interest much before my own, but especially in attending the two last parliaments, promoting an act for the encouragement of the linnen manufacture, and the preventing of frauds in your majesty's customs, &c. Which would have brought in, and saved to your majesty near 200,000*l.* per ann. and employed many thousands of poor, &c. as is well known to many worthy persons about your court, and indeed proved my ruin, otherwise than in this concern, by bringing me into too great acquaintance for one of my capacity, and by that to be concerned as I was. My attendance on those two parliaments I doubt have been mis-represented.

How far I was concerned.

After the dissolution of the two last parliaments, I observed a great dissatisfaction in people in most parts where I travelled, but heard nothing of any design till July 1682, when one Mr. Joseph Tyly of Bristol came from London; I meeting with him, asked what news, he answered to this effect, all bad, and if some speedy course be not taken we shall be all undone, for by their arbitrary, illegal ways and by force of arms they have got sheriffs to their minds, witnesses they had before, but wanted jurors to believe them, now they have got sheriffs, naming Mr. North and Mr. Rich, who will find jurors to believe any evidence against a Protestant, and so hang up

all the king's friends by degrees; I then told him that I thought it was impossible such things could be done, but the king must hear of it; no, said he, there is none suffered to come near the king, but those who have been declared enemies to the king and kingdom by parliament, naming some that were mentioned in the printed votes, who to save themselves do endeavour to keep all such things from the king's knowledge, and persuade him against parliaments, with much more such-like discourse, by which I found the same was discoursed throughout England, Scotland and Ireland as a means to engage people. At length he told me that the Protestant gentry, naming the earl of Shaftsbury, lord Howard of Escrick and others were come to a resolution, seeing fair means would not do, but all things on the Protestants side are mis-represented to the king by such great criminals, and none more in favour than those, to take the king from his evil council, and that by an insurrection in several parts of England at once, viz. London, Bristol, Taunton, Exeter, Chester, New-Castle, York, and some other places in the North, and that there would be a considerable party ready in Scotland, and another in Ireland, therefore said he, we must consider how to manage affairs in Bristol, for if they proceed at Michaelmas in choosing lord-mayor as they did sheriffs, and to swearing of North and Rich, it must begin in October or November, otherwise there will be some Sham-Plot contrived to take off most of the stirring men in the last parliaments; with much other discourse to the same effect, adding, that Mr. Wade would come down very suddenly, by whom we might expect a full account of all. About the end of August as near as I can remember, Mr. Wade came down, who confirmed what Mr. Tyly had said, but could say little as to any farther resolution they were come to above, either of any time or method agreed upon, but that the design went on, and men were employed in all parts to try how people were inclined, who found enough ready, and that there would be no want of men, if it was once begun. Then we considered how it might be managed in Bristol, and what number of men might be needful for the first onset; towards which he said, we might depend on 150 men from Taunton or thereabouts, and concluded that 350 might be sufficient to secure it without the bloodshed of one man, it being our design to shed no blood if possible, but this we resolved not to acquaint any of our friends with it, till the day and method was resolved, of which he said we should have 10 or 14 days notice; and having soon considered of a method, waited in expectation of further advice, but none came till November; then we heard that some disappointment happening they were forced to delay it, though there was more and more cause for it. The end of December or beginning of January had advice that it was deferred to the beginning of March. The third of March I came to London, and meeting with Mr. Wade, asked him how things went, who answered that he could not tell what to make of it, for he could find nothing done more than was nine months before. The great persons who were the managers having done nothing but talked of things, but now there was some others appointed to manage it, who were men of business, naming them to me, viz. The earl of Essex, the lord Howard of Escrick, the lord Gray, the lord Russel, colonel Sidney, major Wildman, Mr. Hambden the younger, and Mr. Charlton, who he did suppose would make something of it, and not do as the others had done, make a year's talk to ensnare many thousands of people to no purpose; for these had already sent messengers into Scotland and Ireland, to know their minds, naming one Aaron Smith sent into Scotland, and at the return of the messengers would come to a resolution as to time and method, but he was confident they could not be ready before Midsummer by reason they had done so little in order to it. Mr. Wade was then designed into the West upon the earl of Stamford's business, and said if he could understand any thing more before he left London he would take Bristol in his way and acquaint us with it. This journey he brought me to colonel Romzey with whom we had little discourse, he being going forth with his lady. The sixth of March I left London, and went directly for Bristol; about the 12th of March Mr. Wade came to Bristol, but then could say no more than as above, the messengers being not come back from Scotland nor Ireland, and was of his former opinion, that if any thing were done, it could not be before Midsummer, he then expected to be about two months in the West, and said that if any thing was agreed upon sooner, one Mr. West a counsellor had promised to write to him in the name of Inglestone, and direct his letter to be left at his brother's in Bristol, who Wade ordered that if any such letter came, to open it, and if any thing material in it, to send it by a messenger to him into the west. About the 17th of March came a letter for him from West in the name of Inglestone, which his brother opened, and not understanding the stile, brought it to me, but I knew not the meaning thereof. The contents was to desire Mr. Wade to get his clients together the next Saturday come fortnight, for that was the day appointed to seal the writings, and neither of us understanding it, his brother sent it by a messenger after him who found him at Taunton, and his answer by the messenger was, that he knew not the meaning of it, but should be within ten miles of Bristol the next Saturday desiring that if any other letter came, to send it to him. About three days after came another letter as above, desiring him not to call his clients together for the time of sealing was put off, which letter was also sent to him, but he understood it not, saying, it was some rash business or other and so went back again.

The 5th of April I came to London, and that evening went to Mr. West's chamber

in the Temple where I found him, who then did not know me, but when I told him my name, from whence I came, and mentioned the two letters Mr. Wade received from him, he began to be somewhat free in discourse with me. I then told him that Mr. Wade and his friends were surprised at the letters, not knowing what he meant by them, and did desire to know, concerning which he seemed a little shy, but after little discourse, began to tell me, saying, there was a design to take off the king and duke coming from Newmarket, which they expected would have been that Saturday mentioned in his letter, had not the fire happened, which caused them to come sooner; nay, said he, had we known they would have stayed so long as they did, their business should have been done: I then asked him what he meant by desiring Mr. Wade to get his clients together by that day, and what he could propose they should have done, to which he could say little, only that they might be ready. I then told him, that I thought it a very rash thing, and that few in England would approve of it, that I was sure none about us would, being a most cowardly dishonourable action, besides the basest sin of murder; then, said he, what is designed by the general design but to take them both off, and if it had been done that way, it would have prevented a great deal of bloodshed in the nation; no, said I, no such thing is designed as I know of, the general design being only to get the king off from his evil counsels, who had advised him to put a stop to proceedings against Popish Plotters by dissolving of parliaments, &c. and to bring all popish offenders to justice, and such who had betrayed the liberty of the subject; and this I think was all the discourse we had at that time being the first of my acquaintance with him: that night I went with him to a tavern in Fleet-street, where was captain Norton, Richard Goodenough, and one Mr. Aylif, who, to my knowledge, I never saw before nor since; whilst I was with them there was no discourse of any business, but I soon left them together. The next day Mr. Roe of Bristol, brought me to Mr. Ferguson, at the house of one Mr. Bourne a brewer, but was not admitted to see him himself; Ferguson then went by the name of Roberts, who when I had told my name and from whence I came, was pretty free in discourse with me, and told me the design went on very well, that there were some Scotish gentlemen come up, who were treating with the managers, and did hope they would agree in a few days, and come to a resolution both as to time and method, of which we should have timely notice, but by all his discourse at that time I could not perceive that he knew any thing of the Newmarket design.

That day I had some discourse with colonel Romzey at his house who I found was privy to the Newmarket business, and his opinion was that the general design would come to nothing, for he did not approve of the managers actings, and said there was nothing like the other design, for that would put an end to all in a little time; then I told him that I thought none in our parts would be for it, which I think was all the discourse we then had, only he promised that if any thing was agreed before Mr. Wade came up, I should hear of it, so I took leave and went for Bristol the next morning. About ten days after, hearing nothing from them, (Ferguson having told me that he thought all would be agreed in four or five days, and promised to advise) I wrote to Mr. West desiring to know how they went on, who wrote me that they still met with delays, and were come to no conclusion, after that I heard no more till May. About the beginning of May I came up to London again, in company with Mr. Wade and some other Bristol men, but when we came up, my business being in the city, and theirs about the Temple, we parted; after two or three days I met with Mr. Wade, and asked how he found things, who told me, he doubted all would prove a sham, for he thought there was nothing intended, finding nothing materially done in order to what had been so long discoursed. Then we went to Mr. West, and discoursed him fully about the contents of his letters, who told us, they were resolved to kill the king and duke as they came from Newmarket, in order to which, he had provided arms for 50 men, pistols, carbines and blunderbusses, and that they were promised the house of one Rumbald a malster, which lay in the road, and the king must come by his door, there the men should have been lodged. Then we asked who was to have acted it, to which he could give but a slender answer, and could or would name but two men, who were Rumbald and his brother, saying, if they could have raised six or 800*l.* to have bought horses, and something to encourage men, they should have had men enough; so that we found they had few men, if more than two, and no horses, only a parcel of arms, which afterwards he shewed us at a gun-smith's house in a little lane near Temple-Bar. Then we asked him what they designed if it had taken effect, to which he answered, that the men should have come up with all speed to London and dispersed themselves immediately, declaring for the duke of Monmouth, and that the king and duke being dead, no opposition could be made; then we asked who were for this design, he named colonel Romzey and Richard Goodenough, and, as far as I can remember, no more; so we found it was carried on by them contrary to the knowledge or approbation of those who managed the general design: then we declared our great dislike of it, telling him, it was a base dishonourable and cowardly action, and would seem odious to all the world, that any pretending themselves Protestants, should be concerned in such a bloody action, and that we thought it was his cowardice put him upon it; to which he said, that he could not fight, but would be as forward with his money as any of his capacity. Then we went to colonel

Romzey, who we found to be wholly of West's opinion, saying, that except something be done that way, I know nothing will be done at all, for he knew the other managers would do nothing; so we had little discourse at that time. After this we went to Ferguson, who told us how things stood; we then found that he knew of both designs, but was only for the insurrection, and told us, that the managers had been treating with some Scotch gentlemen, that they were almost agreed, and that the money they were to be supplied with, would be ready in three or four days, being 10,000*l.* which was to be returned to Holland to buy arms, &c. for Scotland. He also told us that the Scotch gentlemen had made another proposal to the managers, thus, if they would supply them with 30,000*l.* they would begin it in Scotland first, which they could soon have, and then would invade England, desiring the managers only to get a party in the North of England, ready to oppose any force from coming out of England against them, before they had settled Scotland: but this was not approved of, the managers chusing rather to supply them with 10,000*l.* and to begin it in England the same time. Then we daily expected to hear when the money would be paid, but still found nothing but delays, the managers not agreeing how to raise the money, and that if the money had been ready, they were come to no conclusion as to any method more than they were nine months before, having done nothing but talked to ensnare people, reporting about in all parts how the liberties of the people were daily more and more infringed, and that arbitrary government and popery was coming in apace, which incensed people very much and made such a grumbling in all parts, that we feared longer delays would make the common people in many parts mutiny, it being as we thought so generally known, except something was suddenly done, it was impossible it should remain undiscovered, so the next time we met with Romzey and Ferguson (though never together) we declared our dissatisfaction by reason of such long delays, and spoke it so as that it might come to the managers ears, as we suppose it did, being to this effect, That we thought they had only a design to betray people, drawing many thousands into a snare, for their actions shewed little otherwise, being so long discoursing a thing of that nature and done so little towards it: few days after meeting with Romzey again, he told us they were of different opinions concerning a method, some for beginning the insurrection only in London and Scotland, some for it in all places at once as at first proposed, others for several places in England and Scotland, and not in London, saying that if it was not begun in London, but in other places, there would be forces raised in London to send out against them, which will take out most of their strength, and that then London might be easily secured; sometimes they were for beginning it only in London and Scotland, and to have people come up to London from all parts of England, to which we answered that we thought no way better than what was first proposed, (viz.) the beginning of it in many places at once, as before mentioned, for although we had engaged none in or about Bristol, nor should not endeavour it till all things were concluded, yet with the assistance we were promised from Taunton, did not doubt but to get men enough to secure it, and that we knew not where to get 10 men that would come for London, and supposed it might be so in other places, men might be willing to secure their own country who would not be willing to leave all and come for London. Romzey then said if he knew where to get at the head 1,000 men he would begin it presently, and desired that we might meet the next night with some others and consider of things, so the next afternoon we met at Richard's coffee-house near Temple-Bar and from thence to a tavern near, I think called the Little or Young Devil tavern, where met 8 persons, (viz.) colonel Romzey, Robert West, captain Norton, captain Walcot, Richard Goodenough, Francis Goodenough, Nathaniel Wade and myself (this was the first time I knew Walcot.) When we were all sit, colonel Romzey spoke to this effect, as near as I can remember the same words, gentlemen; if we can raise 3,000 men in and about London, there is a person of honour will appear at the head of them and begin the business; which we supposed to be the duke of Monmouth, and do not well remember whether he mentioned his name or not. Which proposal much surprized Mr. Wade and I, that he should then question the raising of 3,000 men, whereas when it was first mentioned to us we thought they had been sure of many thousands in London at an hour's warning. Then it was considered how 3,000 men might be raised and how they might do something to the purpose: then we declared what method we had concluded on for the management of affairs in Bristol, which was as followeth, and they could think of no better way, so it was concluded that London and the suburbs should be divided into 20 parts, and one man made choice of in each division who should chuse out 10 in his division that he could trust, and each of those 10 to find out 15, which would make 161 in each division, so that 20 divisions would produce 3,220, in order to which a map of London was to be bought the next day, and each division drawn out in a particular paper, mentioning every street and lane of note in it, with the north, east, south and west bounds thereof, and to be brought the next meeting 2 or 3 nights after; at the first meeting it was agreed that none should know of this design, viz. (of the chief managers) till all the men were secured, and that those 7 (I being not to stay long in London) should meet every 2 or 3 nights till all was completed. At this meeting Romzey and West would be often saying, there was nothing like the lopping business, meaning

the taking off the king and duke, and that it might be easily done as they went to or from Windsor, or to or from the play-house, but I never heard any agree with him in it. Next day a map was bought, and brought to West's chamber in the Temple, where some met to divide it and draw out the divisions against the next meeting. The next place we met at I think was the Castle-tavern in Fleet-street, where some of the divisions were brought, all being not done, and then it was considered how they should be distributed, being we were most strangers, and agreed that Richard Goodenough, who had been under-sheriff, and so had a general acquaintance, should do it, who was willing to undertake it, the rest of the divisions to be ready against the next meeting, which was 2 or 3 nights after at the Green-Dragon tavern upon Snow-hill, where when Mr. Goodenough came he told us, That he had disposed of some of them, and did hope it would take effect, and that in a week or 10 days he should have fixed the 20 men; the consideration how things should be managed, was deferred till they were sure of the men, only some mentioned their opinions how the Tower, Whitehall, and other places might be best surprised. The Tower was thought might be best gained in the day time, Whitehall and other places in the night, with many such things in way of discourse: Romzey was still upon the old strain of killing the king and the duke, saying (at this the last meeting I was at, going for Bristol next morning) that it might be done in Windsor-Park, and that he would undertake it, but not except every one there present would go with him, to which not one consented, I replying that I was for no such thing, but seeing the other business had gone so far, and was known to so many, if they could bring it to bear in London and other places, I rashly said, rather than fail of Bristol we will undertake it at noon-day with 100 men; to which Romzey said I was a bold fellow; they then promised (when they were sure of the men) to advise and take care for some arms for us at Bristol, and that we should have some great person come down to head us; but I heard no more till the news of the discovery came in public letters; I remember one time when Wade and I was with Ferguson, he told us that the duke of Monmouth was brought to a low condition, all his places being taken from him, and his tenants in Scotland (being so severely dealt with upon account of their religion) were not able to pay rent, so that his estate there, which was accounted worth 10 or 12,000*l.* per annum, did not yield him the last year 2,000*l.*, that he was not well pleased with the management of affairs, and desired Mr. Wade to appoint a place where he would meet the lord Gerrard, and sir Thomas Armstrong, to discourse them, to which Mr. Wade replied, he would meet none of them, for such great men had betrayed the nation already, and ensnared too many thousands to no purpose.

How it was to have been acted in Bristol.

We concluded that the only way to secure Bristol would be by a surprize, which with about 350 men (150 of which we depended on from Taunton, the other 200 to be raised in and about the city) might easily be done about 4 of the clock in the morning, as soon as the watch were gone off, without the bloodshed of one man, thus, dividing the city into 14 parts, so making 13 posts besides the main guard, which should at first have been at the Toulzy (which is in Bristol as the exchange here) we supposed 20 men might be sufficient for each post, and the remainder for the main guard, out of which might be spared 4 or 6 files to be constantly marching about, and to assist where there might be occasion. The method we designed for the raising 200 men in and about the city was thus, first to find out 30 men, 2 for each post, and 4 for the main guard, who might be able each of them to procure 6 and to command them, which would have made 14 for each post and 28 for the main guard, to whom the Taunton men should be added, (viz.) 6 to each post and the remainder to the main guard, who should have come in the day before, some at every entrance of the city and lodge themselves at inns and ale-houses as near the posts they were appointed for as they could: Each man being to know his post and commanders before they came, the Bristol men to lodge themselves and arms, with arms for the Taunton men, in an house as near as possible to their posts, and to send one out from each post between 3 and 4 of the clock in the morning to observe the motion of the watch, and to advise as soon as they were gone off, that they might all immediately repair to their respective posts, calling the Taunton men, and as soon as they had gained their posts to send out a file of musqueteers to fetch in such and such men in each of their divisions as they should have had an account of before, and convey them to the main guard, which in the 14 divisions would have been about 60 persons, commission-officers and others; then to fetch in all the arms and ammunition they could find, which two things being done (as we supposed might be in a little time, and without any opposition, the posts being so near each other, that it would have been impossible for any number to get together) we resolved next to declare the reasons for our taking up arms, and to encourage all to come in to us that we could trust, not doubting but we should soon have had many thousands in the city, and out of the adjacent counties, Gloucester, Somerset and Wilts.

The Reasons why I did not come in, &c.

When the news of the discovery first came to Bristol, and some time before, I was in some trouble by my creditors, and forced to abscond though I thought I had sufficient to pay them, only desired time to get in my effects, their mercy I feared more than your majesty's, and

thought if I should come in and find mercy with your majesty, I could at first expect no better than a prison, and if from it discharged by your majesty, to be kept in by them upon account of my debts. Secondly, hearing there was very many (in and about Bristol) supposed to be concerned, and I (though knowing so much) being able to prove so little against any man, but such against whom there was sufficient proof without me, feared that if I should come in more would be expected from me than I could prove, and so might fail of mercy, it having been our resolution not to discover the design to any of our friends till the managers had agreed both upon time and method, therefore considered how to make my escape, there being then a strict search in all ports, thought best to continue in England for some time, till the heat might be over, and so got an ordinary habit and a little horse about 40*s*. price, and travelled the country as a man dealing in wool, in Gloucestershire, Oxfordshire and Somersetshire, till about the middle of August, then repaired towards Bristol, and by letter, with my wife's assistance (all other friends thereabout fearing to act for me) prevailed with a poor man who had a small boat about ten tuns, for 20*l*. reward, and the like per month, for six months, to go with me for France, and from thence to the West Indies or where I would, my name being then in no proclamation or declaration, if it had I should not have prevailed with the man to go with me. So the 23d of August sailed from King's-Road for Rochell; the 25th proving bad weather, cracked our mast, and so put into St. Ives, in Cornwall, where we staid till the 4th of September; then put out again for Rochell, but meeting with contrary winds was forced into several places in France, and gained not our port till the 17th. In Rochell I loaded her with brandy and other goods, and the 4th of October sailed from thence for the West-Indies (being willing to know how my concerns lay there, that my creditors might have their own, though I knew I might be much safer in France) and arrived at Barbadoes the 11th of November, there I heard of my name being in the Gazette, therefore staid but two days landing part of my cargo, from thence I went to Antigua, where I landed and disposed of the remaining part, staying there about ten days; but it being too soon for the crop, and my charge being the same lying still or going farther, also thinking it not safe to lie long there, resolved to see the rest of the Caribbee Islands, and so went down to Mounserat, Nevis, St. Christophers, St. Eustatia and Anguilla, and so back again to St. Christophers, supposing that to be the safest place, I being known to none there, where I staid about three weeks. About the 14th of January I wrote to my factor in Nevis about what was due to me, who on receipt of my letter discovered me, so that sir William Stapleton presently sent his warrant to St. Christophers to apprehend me, but before it came I was gone down to St. Eustatia, expecting to meet my vessel there, which I had sent up to Barbadoes, and it being known where I was gone, the deputy-governor of St. Christophers sent five men with his warrant after me, to whom on sight thereof I submitted, though had an opportunity and might have escaped, but was rather willing to cast myself at his majesty's feet for mercy, than live such a life any longer, not daring to appear where there was need of me (among my factors) who I doubt will take too much advantage by my troubles for my creditors interest. In Nevis I was kept a prisoner 13 days, where I promised sir William Stapleton that I would make what discovery I could, giving him the names of some who I had acquainted with it in Bristol, which I suppose he hath given an account of, desiring him that it might be kept private, for if it was known they would have advice of it; but it was not kept so private as I expected, for the night I came off I was told of it, therefore suppose they were advised by a Bristol ship that came away before us, by which I wrote not a word. I suppose she might be at home long before us, we being nine weeks and five days. All that I can say against any of them, except William Wade, who is before-mentioned, is, that I acquainted them with the business, as I believe many thousands in England were, and do suppose they would have been concerned. Hereunder is an account of many other persons that I have heard were concerned in the design for an insurrection, which is all that I can call to mind of any thing material that ever I heard concerning the Plot.

A Paper found in Mr. Charleton's Custody.

Worthy Sir; The particulars underwritten, are a brief account of what service was done since May the 15th, 1680, during which time 6*l*. per ann. hath been paid for rooms, most was for that service, besides wages to two servants, amounting to upwards of 10*l*. which is not at all charged to the account. And all earned and charged on that account is but 56*l*. 10*s*. for paper and print, viz.

The Black Box, first impression, paper and print, number 1,500 - - -	£. 5	0
Second impression, with alterations, number 1,500 - - - - - - -	5	0
The Answer to the Declaration, three sheets, number 3,000, paper and print - - - - - - - - - -	18	0
The Two Conferences, five sheets, number 2,500, paper and print - -	25	0
Reasons for the Indictment of the D. of Y. number 1,000, paper and print	2	10
For bags, boxes, and porterage - -	1	0
Sum is - - - - -	£. 56	10
Whereof received -	£. 33	0
Remains - - - - -	£. 23	10

Besides all the large promises when engaged in that service, viz. to be the parliament printer (and when the parliament sat, had not one sheet to do of all the vast numbers done for them). Also 100*l.* per ann. and reimbursement for an engine made on purpose for the service, which cost 15*l.*; a former that cost 16*l.* being rotted in the former public service.

Towards all which, eight guineas were received of Mr. Ferguson, said to be his own gift. This is a brief account of what past under Mr. Ferguson's order, which shall be faithfully made appear to his face if he dare stand the test. By Sir, your most humble servant.

Captain WALCOT'S LETTER, To the right honourable sir Leoline Jenkins.

Honoured Sir; I being in the country, and to my great trouble seeing myself in his majesty's proclamation, I came last night to town, resolving to lay myself at his majesty's feet, let him do with me what he pleaseth; this is the first crime I have been guilty of, since his majesty's restoration, and too soon by much now: if his majesty thinks my death will do him more good than my life, God's will and his be done. Until I sent your honour this letter, my life was in my own power, but now it is in the king's; to whom I do most humbly propose, That if his majesty desires it, I will discover to him all that I know relating to England, Scotland, or Ireland; which I suppose may be something more than the original discoverer was able to acquaint his majesty with; especially as to Ireland: there is not any thing his majesty shall think fit to ask me, but I will answer him the truth, as pertinently and as fully as I can. My intimacy with a Scotch minister, through whose hands much of the business went, I judge occasioned my knowing very much: and I do further humbly propose, That if his majesty thinks it advisable, I will follow those lords and gentlemen that are fled into Holland, as if I fled thither, and had made my escape also, and will acquaint the king, if I can find it out, what measures they resolve of taking next: I do assure his majesty, the business is laid very broad, or I am misinformed. And I am sure as to that particular, if my being with his majesty, and your honour, be not discovered, I shall be ten times abler to serve him, than either Mr. Freeman, or Mr. Carr; for they will trust neither of them. There's scarce any thing done at court, but is immediately talked all the town over; therefore if his majesty thinks what I have presumed to propose advisable, I do then further most humbly propose, That my waiting upon his majesty may be some time within night, that your honour will acquaint me the time and place where I may wait upon you, in order to it; and that it may be within night also, and that nobody may be by, but his majesty, and your honour: and if his majesty pleaseth to pardon my offences for the time past, he shall find I will approve myself very loyal for the future; if not, I resolve to give his majesty no further trouble, but to lie at his mercy, let him do with me what he pleaseth. I purpose to spend much of this day in Westminster-hall, at least from two of the clock to four. I beg your pardon I send your honour this by a porter: I assure your honour, it was for no other reason, but because I would not have a third person privy to it; and that I might have the better opportunity to make good my word to his majesty, and to approve myself

Your honour's most humble servant,

THO. WALCOT.

MINUTES of WALCOT'S CONFESSION before his Majesty, July 8, 1683.

The first business was spoken of in a place and at a time he does not now remember.

But it was agreed that lord Shaftsbury should have the command in London.

Lord Russel in Devonshire.

Lord Brandon in Cheshire.

Duke of Monmouth in Taunton and Bristol.

This agreement did not hold long: some coming to town that said the countries were not ready.

The last business was spoke of about a fortnight before Ash-Wednesday last: captain Walcot had no conference about it with any lord but with the lord Howard of Escrick.

Ferguson did oblige captain Walcot to bring him and the lord Howard together: the lord Howard and Ferguson discoursed together of the ways and means to surprize the Tower.

Lord Shaftesbury told him that the city was divided into twenty parts, and that there was to be a chief to every part, and he was to choose fifteen men to assist him within his division.

Lord Shaftsbury told the duke of Monmouth that the king was to be deposed.

Rumbald was lieutenant of horse in Fairfax's army. Walcot served in the same army.

Richard Goodenough said the duke of Monmouth expected six thousand men together in London.

Lord Russel and lord Gray were to mortgage lands for the raising of ten thousand pounds.

Lord Howard of Escrick was concerned in the grand consultation.

Captain Walcot always opposed the assassination: he will leave 800*l.* a year behind him.

Ferguson told Walcot about a quarter of a year ago that the earl of Essex was in this affair.

A NOTE taken from Walcot, by Captain Richardson, Keeper of Newgate, July the 11th, 1683.

If colonel Romzey be to be spoke with I would have you speak with him to be tender of me, that will do him no hurt, he hath room enough to serve the king upon others, and if Mrs. West, would do the like to her husband, her children ———

On the other side,

Run no hazard nor speak with him before any body, if you cannot be private leave the issue to God.

TWO LETTERS from the Mayor of Newcastle, dated June the 1st, 1683. To Mr. Secretary Jenkins about Pringle, &c.

Newcastle, June 1st, 1683.

Right honourable; We presume to acquaint your honour there are two persons apprehended and committed to his majesty's gaol here, with whom there are found divers seditious papers and letters, they were for going beyond seas, the one of them goes by the name of Alexander Pringle, the other Edward Levitson, when their papers and writings were seized on they attempted to destroy and convey the same, but were prevented: we have sent by express the writings so seized on to his grace the duke of Newcastle our lord lieutenant, to forward the same with this Letter to your honour. What commands we receive from your honour shall be obeyed by, &c.

Newcastle, June 13, 1683.

Right honourable; We received your honour's Letter of the 5th instant, do acknowledge your favour and kindness therein, we have and shall make it our chief care and study to apprehend all such offenders and do our utmost endeavours on all occasions for his majesty's interest and service, we are satisfied one of these persons is Alexander Gordon of Earlestone though now called Pringle, both these prisoners were delivered yesterday to colonel Strother to be safely conveyed into Scotland according to his majesty's commands. We are, &c.

A LETTER to Mr. Alexander Pringle, seized at Newcastle.

London, March 20, 1683.

Sir; On Saturday last I had the occasion of seeing a letter from you directed for Mrs. Gaunt in whose absence Mrs. Ward had received it, at the reading of which I was not a little troubled, considering my full resolutions signified to you in my last, for effectuating of which I had spoke for passage and taken my farewell of mother Gaunt she going into the country; and that very week I was so set upon by the gentleman with whom I stay and Jo. Johnston with some others, to stay but a month and if that did not accomplish somewhat in hand to help trading, then I should be no longer detained. After I was prevailed to retract so far I ordered Jo. who had time at command to give you an ample account of matters: And withal Jo. was desired by our friends from Scotland to stand here in my place: The like engagements of secrecy, &c. being taken, and thereupon I ordered him to shew you the grounds of my staying, and to desire if you inclined to cross the water to come this way. But since many are the confused yea troubled thoughts that have possessed me for yielding: Concerning which as also my yielding to it, take the subsequent account. In my last, or it precedent to it, I shewed you that trading was very low here and many breaking, which hath made the merchants, such as they are, to think that desperate diseases must have desperate cures. And while that they have some stock it will be better to venture out than to keep shop and sit still till all be gone, and then they shall not be able to act but let all go, which resolution I thought a thing not to confide in seeing the most of them are fire-side merchants, and love not to venture where storms are any thing apparent. But about my departing they shewed the model of affairs in such order that I see venture they must and venture they will, whereupon I demanded how our trade would be carried on. Answer, they knew well what goods had proven most prejudicial to their trade, and therefore they thought best to insist upon negatives. In which whatever I proposed is assented to, as I find, and this they thought best to still some critics in the trade and by this means to endeavour the dispatching the old rotten stuff before they order what to bring home next, this looks somewhat strange to me, but when I consider all circumstances I think they for themselves do best in it, for our merchants I made account only to have had some stock for to set the broken ones up again and so bid them here farewel and they to try their way and we ours since they think fit that some of those whom we have found (as you will say when you hear them named) treacherous dealers in our trade consulted and accordingly have done, whereupon I fear or rather hope that our merchants though broke will rather desire to live a while longer as they are, than join with such, and to advance their trade unless surer grounds of their fidelity be gotten than is or can be expected. And this is the bottom of all my sorrow. But to proceed I find (if all hold that is intended) that they think it is almost at a point to set forward if they had their factors home who are gone to try how the country will like such goods as they are for or against the making sail of. Friends I mean merchants wrote to me that after I had spoken to you possibly you might come this way the better thereby to advise them what to do in this case for I have signified somewhat of it to them but not so far as this; because I thought to have seen you long 'ere this time, but I hope you will not misconstruct of my staying, seeing in it I designed nothing but advancement of our trade. But once this week those factors sent for will be here, and then matters will (*in instanti*) either off or on, break or go through: Wherefore in reference to friends I desire you will advise me what to do if you cannot or think it not convenient to come here, if you do let a letter precede, and if any strange thing fall out this week or the next, I will again post it towards you. I think when this and the next week is gone (and no news come from you) that I shall set forward being still so ready as that in twelve hours I can bid adieu.

The Whigs are very low as well in city as suburbs all meetings being every Sunday beset with constables to keep them out, and what they get is stolen either evening or morning. This winter most of the great bankers and gold-

smiths in Lombard-street are broke and gone. The Bantam factory in the Indies is taken by the Dutch. Confusion confusion in town and country, such as you never saw. Mrs. Ward and several others desire to be remembered to you: My endeared respects to yourself and B. with the young men arrived. This I have writ in short and in haste, expecting a line with as great haste as you see is needful; for matters are full as high as I tell you. Farewel.

From your friend and servant, Jo. N.

Be sure that you direct not for Bethnal-Green, but for me at Mr. Meads in Stepney near London. Directed on the back thus; To Mr. Alexander Pringle to be left at Mr. Alexander Hope his house in four Glass-haven, in Rotterdam, these.

The EXAMINATION of JOHN NISBET of Stepney taken before John Tendring, Esq.

This examinant being duly examined, doth say that he was born in Northumberland, that he was bred a scholar at Edinburgh in Scotland, that he came from thence to London, that he was usher at Mr. Walton's school at Bethnal-Green, that from thence he came to Mile-end, and there lived about a year in the house of one Mr. Matthew Richardson, and taught his children. This examinant saith further that he came down to Bradwel with Mr. Richardson, and that being a scholar he did intend to go beyond-seas into Flanders, and put himself into some college.

This examinant wholly denied that he knew Mr. Richardson to have any other name.

Capt. Coram me, J. TENDRING.

A Copy of EARLESTOUN'S COMMISSION.

Omnibus et singulis Religionem vere Reformatam Profitentibus ad quos præsentes pervenient.

Quin, Variæ Angustiæ, pertristes persecutiones; et opprobria nostræ (hic in Scotia) Ecclesiæ, magna, ad vestras pervenere aures, neutiqum est nobis in dubio: Quum, depressus, et quoad externa, Status devastatus; quo, pro Fide Sanctis traditâ, et nostræ Ecclesiæ privilegiis et jure peculiari contendendo, redacta est, fere omnibus sit notus: Quorum intuitus et consideratio una cum magna, de vestri (in nobis interesse, spe conceptâ) hunc Dom. Alexandrum Gordon de Earlestoun Legatum nostrum, vobis omnibus, Reipublicæ Israeliticæ fautoribus, et benevolentibus mittere et demandare non sine multa causa, persuasit; causam, et Statum nostrum malitiose, subtilitate adversariorum vobis representatum, cognoscentes qui,* eo ipso ut, nos et quicquid a nobis actum,*vobis reddant ridiculo; in male representando, et Pseudographias actorum nostrorum dispergendo, vigilantissimi, sunt: Quasi progressus nostri et principia Verbo Dei (Supremo contraversiarum judici) et vere Protestantismo, essent contraria: Quum nos, nec quicquid tenere, nec tenere cupere, Verbo Dei scripto, et antiquis, civilis, et Ecclesiastici Status, legibus; et pristinæ reformationi contrarium, declaramus, sed cum omnia in eo fundentur, potius (Deo dante) actiones nostras ei reddere conformes cupimus. Quapropter nos protestantes, Antierastiani, Antiprelatici, et Tirannide agitati, in Scotia Presbiteriani, huic nostro legato, concredimus ei plenum consensum et assensum dantes fideliter, et vere, omnes vere Reformatos, ad quos perveniet, informatos reddere; Quod solummodo nos ipsos in viâ Domini puros (Dei gratia) quoad possumus servare, intentes sumus et viam majorum, vere Illustrium, in nostra nobili reformatione propaganda in diversis, ejus, a Papismo, Prelatura, et Erastianismo gradibus, et vestigiis incedere cupimus, atque hæc sunt nostrarum persecutionem (pro præsenti) capita, et causæ. Ad quorum pleniorum et clariorem notitiam, hujus nostri Legati relationi remittimus; Testimonio ejus, cum sit in rebus nostris, publicis declarationibus et martyrum Testimoniis, sat versatus, ejusdem nobiscum judicii, et sub iisdem perpessionibus fidem dare potestis. Humillime igitur oramus et obsecramus ut relationi hujus nostri Legati tanquam vere fides a vobis detur, et ut nullius narrationi, vel datæ vel quæ posthac detur, de nobis, principiis, et progressu nostro sicut verbo Dei, votis, juramentis, ei datis, et relationi hujus nostri Legati, contrariæ cum sit tantum calumniose ab adversariis data credatis. Quocirca, omnes Zionis fautores oramus; nostrum statum, quo redacti sumus, non parvi facere, sed serio perpendere; Deus enim omnes, ad sympathiam vocat, et perpendum est, omnes conjurationes et Adversariorum consultationes, in universam Ecclesiam esse destinatas: Et uno membro patienti totum corpus cum eo compati debet. Datum Edinburgi decimo die Aprilis Anno Domini millesimo sexcentesimo octuagesimo secundo. Et ex nostro mandato subscriptum a Clerico Conventionis nostro sic subscribitur Jacobus Renwick.

The EXAMINATION of GORDON late of Earlestoun, taken before the Committee of Council, July 5, 1683. In presence of the Earls of Linlithgo, Perth, Bishop of Edinburgh and Register.

Alexander Gordon of Earlestoun being examined again by order of the council upon several interrogators arising from the letter sent to him by Jo. N. dated London, March the 20th, 1683.

As to the secrecy to be taken of the man that was to stand in Nisbet's place. That it was an ingagement of secrecy and some queries to try if they agreed in principles.

Being interrogate of the account of matters written to him by Jo. at the desire of Jo. N. declares that it was a letter under the metaphor of marriage, and that by the marriage, he understood a rising designed there.

Being interrogat what the Merchants being

low and breaking did mean. Answers, That he thinks it means that their people, viz. the dissenters were breaking in their stocks by excommunications and other courses, and therefore they were resolving upon desperate courses which was rising in arms.

Being interrogate what is meant by the said merchants. Answers, Some that lived at their ease and quiet would not venture to rise, when they saw much danger.

Being interrogate what is meant by the model of affairs that would make them venture. Answers, That they had shewn to Jo. N. a model how they would go about their affairs in order to their rising.

Being interrogate anent their resolution to insist on negatives, and what were the goods that proved prejudicial to them formerly. Answers, That the meaning was, they resolved to agree in what they would put down, which he thinks was the whole government, civil and ecclesiastic, but that they would not determine positively what they would set up.

Being interrogat what was it that Jo. N. proposed to them that they assented to. Answers. He thinks he had stated the grounds of the quarrel relative to the present government, and that they had assented to it. But declares that when Jo. N. was speaking to him of these things he thought them of that nature that he shunned discourse upon them to receive information concerning them, because he had no mind to meddle with them.

That by critics of the trade is understood the Scotch fanaticks because they are nice in associating themselves.

That by the dispatching of the old rotten stuff, he thinks it the dispatching of the secretaries or the present government, but rather thinks it was the last.

That by the broken ones which he was to set up is meant the Scotch fanaticks to be helped by contributions, and that by their trying their way and we ours, was meant the English was for rising in arms, but the Scotch fanaticks were for delaying some time.

That by these called treacherous dealers, he thinks is meant both the secretaries and the present government who had formerly broke their government, but never heard these persons named.

That they being at a point to set forward, is meant their being ready for rendezvous.

That by emissaries is meant persons sent out both in Scotland and England from London to try the people's inclinations to a rising and to incite them to it, and that these merchants who advised Jo. N to send for the declarant to come that way were the meetings of the fanaticks in Scotland.

That by advancing of the trade he thinks is meant the carrying on of the rising.

By that part of the letter which tells that when the factors would return that matters would in instanti be off or on, that the meaning was that when these factors came in they expected money for buying of arms and then they would instantly have risen, but that the money was not come in, at that time when he did meet with Jo. N.

That by the strange thing that might have fallen out in a week or two, he understands no other thing than the insurrection intended.

Declares that this Jo. N. was a person that past under the name of John Nisbet, an Englishman, and stayed at one Mr. Mead's in Stepney, which Nisbet was an usher of a school at Bednal-Green before.

That the close of the letter bearing that things were fully as high as I tell you, is meant the present intended rebellion.

That by the capital letter B. is meant one Mr. Brake a minister in Lewarden in Friesland, and the young men are some students who are in Holland.

Being interrogate what he heard of the earl of Argyle's concurring or assisting in this insurrection, Answers, That he heard by report in Holland, that Argyle had undertaken to raise 10,000 men to assist in that rebellion, and that he was to furnish himself with arms in Holland, and about the time of this report which he thinks was in December or January last, he heard Argyle was in Holland but that he did not see him, and to the best of his memory Jo. N. also told him of the earl of Argyle's concurring in the rising, but remembers of no other person.

Being interrogate upon the little letter from Stepney which he thinks was about the beginning of May, dated Friday at seven o'clock. That the man whom he speaks of, is Mr. Mead a minister, and that by the words what my hands find to do was meant Jo. N's. going to Holland and that the declarant was to meet with Mr. Mead to let Jo. N. go.

Further declares that John Johnston was one, who at other times past under the name of Murray, who is a little man pock-marked, and wears a periwig. 'Sic subscribitur.'

A. Gordon, Linlithgow, Perth, Jo. Edinburgen, Geo. Meckenzy, J. Drummond.

This is a true copy of the original declaration and answer made by Alexander Gordon, late of Earlestoun to the interrogators proposed to him by the committee of council, which is attested by me.

WILLIAM PATERSON. C. S. C.

A Copy of ALEXANDER GORDON'S EXAMINATION, June 30, 1683.

The said Alexander being interrogate what he knew of the author of that letter directed to Alexander Pringle of the date 20th of March last, to be left at Alexander Hope's House in Glosshaven Rotterdam, which runs upon the metaphor of trade, answereth, That the author of that letter seemeth to him to be one Jo. Nisbet, with whom he conversed a year ago at London, and ordered the said Alexander to direct his letters to Bednal-Green, and since to Mr. Mead in Stepney near London, and that he the said Alexander had written a letter to this Jo. Nisbet,

challenging him why he came not sooner over to Holland as he had promised, dated about January last; and that he received this letter by the metaphor of trade in answer thereunto; and that the venturing spoke of in the letter was to signify a resolution of a speedy rising in arms; and that the factors therein mentioned signified their agents and emissaries who were sent out into different corners both in England and Scotland to know the pulse of their complices and parties if they were in readiness to join and rise with them, and that they brought back accounts of their willingness so to do, and readiness for an insurrection. And as to the assistance they were to have from Scotland, he understood it at his last coming here, and some months before he came over in May last, he heard amongst the Dutch people commonly reported that there was to be very shortly a rising in England, and that the earl of Argyle was to furnish from Scotland, 10,000 Highland-men for their assistance; and that at his coming hither last he heard that there was a person come from England to sir J. Cockram, alledging he came about the affair of Carolina, but that he had discovered himself to a servant of the lord treasurer's that he had come to Scotland upon other matters, and that the letters for Scotland from any correspondents of the party in which Earlestoun was engaged was directed to Mr. Henry Emertson written in Edenburgh; and that before he came last hither in May, the meeting of these phanatical people had received a letter from England subscribed by one J. S. whom he takes to be one Murray as he named himself to Earlestoun (as the other forementioned person named himself Jo. Nisbet) in which letter there was the metaphor of a marriage anent which all things were agreed and the marriage ready to be solemnized, which occasioned their sending for him the said Alexander Gordon to have his mind concerning that affair; and they interpreting that letter signed by J. S. from England to concern the seeking of their assistance in their intended rising there he did dissuade them from it; and that by the marriage they understood a rising to be intended in England; and that it was ready to be solemnized was to signify that an insurrection was to be very speedily on foot; and declared that these with whom Earlestoun conversed here declared that they believed that the persons who came from England to sir Jo. Cockram were sent to manage a correspondence in order to the design of rising in arms.

The RELATION of ALEXANDER GORDON of Earlstoun of what he was informed of, and heard as followeth.

About the time of the election of Rich and North, I heard that there were some designs of rising in arms of some people in England, and in order thereto there was some treating with my lord Argyle, but not agreeing to the terms my lord left them, and I heard it ceased for some time and went over to Holland; and when he was there, I was informed of the renewing of the treaty, and agreed upon the following terms, viz.

That the earl of Argyle should raise seven thousand men, and the treators (who as I was informed were English-men) were to advance the said earl ten thousand pound sterling: and this was agreed to in April last.

The persons in England were by information the duke of Monmouth, the earl of Shaftsbury; but after the said earl's decease I did not hear so much of the duke of Monmouth. I was also informed of Ford lord Gray of Wark his being in the design.

I was also informed that those concerned in Scotland most in the said design, were sir John Cockram, Jerviswood, Sessnock elder and younger, and that sir John Cockram the one day kist his majesty's hands, the other day went to the cabal anent the above-written design.

I was also informed that no small number of the gentlemen in the West and other places in Scotland upon their resentment of the present government, particularly as to the test and other papers put to them, were not resolved to stand to them although they should take them, but rise upon the first occasion.

This information I heard from Murray alias Johnstoune, who as I heard was a West country-man in Scotland, who offered to take me along to their cabals, but upon my refusal to meddle in the designs kept himself and told no more than those generals.

I met with Mead at one Mr. Cook's a merchant living near the Exchange in Austin-Fryers in London, but I do not mind what he spoke of the aforesaid design to me, but thinks not, for I was a stranger to him, and not acquainted before that time: and this I subscribe before these witnesses sir William Hamilton of Prestoun, master John Vans keeper of the Tolbooth of Edinburgh.

A Copy of the Interrogators proposed to ALEXANDER GORDON sometime of Earlestoun in the Committee, September 25, 1683.

To interrogate the said Alexander Gordon what correspondence he did hold with the pretended general convention from whom he had his commission. And if he did not write a letter to, and hold correspondence with, them before he came last to Scotland, and upon what account he did write that letter to the said convention which is mentioned in one letter to him from one Michael Sheills bearing that the convention had received his letter, &c. And if to his knowledge the said pretended convention general did not hold any exact correspondence and intelligence with the disaffected party and other their adherents both in England and in the united provinces of the Netherlands, and what the said correspondence was and if it was not to the weakening and diminishing if not to the ruining and overturning of his majesty's government both in church and state as it is now established within his majesty's dominions.

2. Upon what account was he moved to ac-

cept of the said commission and what other instructions he had from the said pretended convention general in order to the methods he was to take for inviting the assistance and supply of the foreign states and churches unto which he was commissionate, and if he had not instructions for imploring their aid by supply of money and other necessaries for fitting and capacitating the distressed party in Scotland to subvert and overturn, at least to resist, his majesty's government in this kingdom.

3. Who were the persons who did sit and assist in the said convention general when his commission was ordered, and who did preside thereat. And that he would declare such of the members of the said convention as he either knew or heard of by their proper names and sir-names and place of their residence and from whom he received the foresaid commission, and who were present at the delivery of the same to him and what a person Mr. James Renvicle is who subscribes as clerk to the said commission, and if that was his own true or only a borrowed name; and if the same was borrowed that he would declare what his true name is, and where his place of residence was, and if he knows what is become of him since or where he now is, and to interrogate him after the same manner in relation to Michael Sheills.

4. If the said general convention was not composed of persons sent from particular districts within this kingdom and how many such districts there were and who were the leading persons within these particular districts and what sort of persons they were who were commissionate from these reserved districts to the pretended general convention. And what farther he knows in relation to the government and management of affairs within these particular districts.

5. To interrogate the said Alexander Gordon what persons he knew either in Scotland England Ireland or in the united provinces of the Netherlands that did hold correspondence with the said pretended convention general in order to their acting and consulting of their affairs or concerting of measures and methods to be taken in the prosecution of their purposes and designs, &c.

INTERROGATORS to be put to the said ALEXANDER GORDON in Relation to the late Horrid Conspiracy.

Imprimis, That the said Alexander Gordon would ingenuously declare the true and genuine meaning and sense of that letter written to him by J. N. from London and would give a full and satisfactory account thereof to the lords of the committee such as may satisfy rational and knowing men conform to the meaning of the writer, who was his correspondent, and who would never have writ to him in riddles and mysteries, seeing by the letter it appears that he was informing Alexander Gordon with the state of their affairs and with the measures and resolutions they had already taken. And therefore to interrogate him who this correspondent was who subscribes J. N. and where he resided and what was his trade and occupation and with whom else he the said Alex nder did know him to keep correspondence, and how he became to be acquainted with him, and of that way and manner of writing under the metaphor of trade and commerce, &c. Had not been conceived and agreed betwixt the said Alexander and the said J. N. and their party before thereby to veil and disguise their rebellious contrivances and who were present at the contriving of such a metaphorical way of writing besides the said Alexander and J. N. and if these and the like methods were not a common rule and practice of these barbarous and execrable conspirators for disguising of their horrid and bloody designs against the person of his sacred majesty and royal brother and for rising in arms against his majesty and his government.

2. What he knows in relation to the said horrid conspiracy against his majesty's person and the person of his royal brother or of rising in arms against his majesty and government and who were accessory to the said horrid designs either in Scotland England Ireland or any where abroad whither in the united provinces of the Netherlands or elsewhere and that he would give an account of them in so far as he knows by their names sir-names and places of residence and such other designs as he knew them by, and likewise that he would give an account of the particular designs methods and contrivances treated upon and concerted for the rising in arms against the king and government in Scotland England or Ireland and by what persons the said treaties and designs were carried on as to all which he would give a particular and distinct account to the lords of the committee.

3. To interrogate him anent the other letter written to him under the name of Mr. Pringle and what was the true meaning thereof and by whom the same was written and if the trade therein specified do not relate to the condition of the fanatic and disaffected party, and what other import the said letter does bear and from what place of the world the same came.

A Copy of the EXAMINATION of ALEXANDER GORDON late of Earlstoun.

Edinburgh, 25th of September 1683.—The earl of Linlithgow; lord Livingston; Lord President of Session; lord Collintoun; lord Castlehil.—Justices; The lord Pitmedden; the lord Harcarss.—The earl of Linlithgow, elected President.

To the first interrogator answers, That the first time he met with that pretended convention was near the Inner-Kirk of Kyle in the fields about two years ago; and there were there about fourscore persons or thereby and that he was brought there from his own house by one J. Nisbet, whom the declarant knows not further than he is a West-country-man

about Glasgow; and that Jo. Nisbet is another Jo. Nisbet that wrote a letter to him to Holland under the notion of trade, relating to the rising and rebellion in England. And farther, That about a year and an half ago he met with another convention consisting of fourscore persons or thereby in the field within 5 miles of the former place near Inner-Kirk and that very few of them had swords; to which meeting he was advertized to come by a letter sent to his house subscribed by Mr. James Kennick who is clerk to the convention and heard of no ministers being amongst them at either of these times and says there were people there from all the districts in the several shires of the kingdom: which districts he was informed were fourscore; and that he knew none of the persons in either of these meetings except Mr. James Kennick the clerk, the said Jo. Nisbet who came from a district besides Glasgow, and William and James Stewarts who came out of Galloway and Robert Speir who came from the Lothians, and one Forrest who came from the Upperward of Cluyd and that at these general meetings they produced their commissions from the several districts to the clerk that it might appear that they were commissionate to get relief for the distrest in their bounds, that the business of the convention was to provide for those amongst them were in want and for their own security against the dangers they were in, being denounced fugitives from the laws and in hazard to be catcht by the governors; and that he heard nothing treated or spoke amongst them as to rising in arms, nor knows of any correspondence these of the convention had with any in Ireland; and as to England, he supposes there was a correspondence there, but knows not these that managed it, except the said Jo. Nisbet, he having shewn the declarant a letter he had from Michael Sheills, one of the clerks of the convention, which he saw in the end of March or beginning of April last.

To the second interrogator, the reason why he accepted of the commission produced, declares, he accepted it upon the account to see if there could be a way found for the distrest brethren to go abroad, or to have something from abroad to maintain them there.

To the third interrogator declares, he remembers no more persons were present but these condescended upon in the first interrogator, which he says was occasioned by his being so long abroad; and although upon seeing their faces he might know several of them, yet knows not their names, nor the places of their residence.

To the fourth declares, The said general conventions were composed of persons sent from the several districts, of which there were as he heard about fourscore in number, in which fourscore districts he was told there would have been 6 or 7,000 men, but knows not of any gentlemen or leading men amongst them. As to the commission it was sent him, to Newcastle by a common receiver, whom he knows not, directed to him at his lodging at the sign of the Vine in the Gateside in Newcastle, his landlord's name being George Marshal, a public Inn-keeper, and addrest to him under the name of La Graveil, being the name he went by, and that the same was under a cover of James Kennick, their clerk who subscribed it.

To the last interrogator repeats his answer made to the first interrogator, and knows no further.

Being further interrogate upon the interrogators given in anent the conspiracy in England, declares, That the first time he heard of any design of rising in arms was at the time when the competition was anent the sheriffs at Midsummer was a year, and then he heard the duke of Monmouth was to head the rebels; and this he had from Jo. Nisbet and one Mr. Murray a Scotch-man then at London; and declares, That in January last the declarant being in Holland, he heard by general report that the late earl of Argyle was to raise some thousand Highlanders to assist the rebels in England by making a diversion, and was to get a sum of money for that effect; and that in March last he having received a letter from Jo. Nisbet in Holland, he came over to London, where he met with the said Nisbet and Murray, who told the declarant they designed to rise presently in England and to rendezvous in 6 or 7 places at one time particularly at Coventry and London, and that they computed several thousands in Yorkshire, who were to join with them. That Murray desired the declarant to go along with him to meet with the late lord Russel and Gray and the lord Wharton (but of Wharton they said they were not very sure of him being a feared man) and with Mr. Ferguson, and spoke of several old officers of Cromwell's that were to be there, but the declarant not being for the present rising shunned to meet with these persons or any of them, and both Nisbet and Murray told the declarant that sir John Cockram was with them and heard from these two persons that both the Cessnocks were concerned in that business. As to the letter written by Jo. N. of the 20th of March and directed for the declarant at Rotterdam, declares that Jo. Nisbet sent the said letter and that under the metaphor of trade throughout the whole letter is meant the design of rising in arms and a rebellion and that by the words (dispatching the old rotten stuff) is meant, either the excluding the sectaries from joining with them or destroying the government both civil and ecclesiastic which last the declarant supposes rather to be the words and that by the factors are meant their emissaries for carrying on the rebellion; and for that strange thing that was to fall out that week, as the next, the declarant thinks is meant the sudden muster of the rebels. In the close of the letter which says things are full as high as I tell you, is meant that the rebellion was instantly to break out, and having met with Jo.

Nisbet after his coming from Holland the said Nisbet explained to him that the sense of the said letter was as is abovesaid.

As to a letter direct to the declarant under the name of Pringle of the 2d of May 1683, declares, That the name of the subscriber which is blotted out was so blotted before it came to his hand, but by the contents of it he knows its from one Rob. Johnston a tenant or vassal to the lord Grey on the border, and that the traders and trading there spoke of is the designed rebellion and that the said Robert Johnston offered to come to Scotland with the declarant to have seen some of our disaffected people here and to have met with them. And that A. Y. mentioned in the said letter which the letter says laboured to undervalue the disaffected party in Scotland which he calls your goods, is the name of Andrew Young who stays about Newcastle whom he supposes to be a suspect person because he was feared that colonel Struthers would apprehend him. And that he supposes the way that that letter came to his hands, was from some persons that were at a meeting at Midsummer about that time, where was present several of those people that had commission from the several districts, but that he himself was not at that meeting.

EXAMINATION of Mr. STEIL and ANDREW OLIVER anent Mr. Aaron Smith's coming to Scotland and his going to sir Jo. Cockram's house at Ochiltree. Edinburgh, Dec. 11, 1683.

Mr. Thomas Steil in Jedwart-forest declares, that in February last, an English gentleman coming to Jedwart being recommended to the declarant by one David Sheriff, stabler in Newcastle, only that he might direct him to Ochiltree, spoke only to him of Carolina business anent which he was to transact with sir John Cockram; and that the declarant got him one Andrew Oliver in Jedwart-forest for hire to be his guide to Douglas, and that the said Oliver went with him from that to sir John Cockrams and declares he knew not his name, and had no knowledge of him, but that he was called when he was at Jedwart, Clerk, but afterwards heard he was called Smith,

Andrew Oliver in Barwick tenant to the marquis of Douglas being examined declares, a little before seed-time last the declarant met with Mr. Thomas Steil at Linalie, the marquis's house, of purpose to bring home his wife from Douglas to Jedburgh-forest, and the declarant being upon his way and coming to provost Ainslie's house in Jedburgh, and there being a stranger there an Englishman ready to take horse to go to the west, the said Mr. Thomas Steil having told the deponent there was a stranger who knew not the way and would be desirous of his company, and the deponent having called for the stranger in the house he and he took horse together and rode to Peebles that night and the next day came to Douglas, and the stranger upon the way told his name was Samuel Clerk, which he thinks was the next day after they came from Jedburgh; and the next day the stranger not being able to get a guide, to convey him to Ochiltree, at the desire of Mr. Thomas Steil's wife did go along with him from Douglas to Ochiltree, and the stranger went into the house of Ochiltree to call for the laird; the deponent not having gone in with him, where he staid about one quarter of an hour, and came back to a house in the town where the deponent was to lodge. That the deponent heard from the stranger that his business with the laird of Ochiltree was concerning Carolina business, and of their design to send families there in the spring to plant, and that he commended the country.

AND. OLIVER. JO. EDENBURGEN.

Edinburgh, SEDERUNT *and* JOURNALS *of* COUNCIL, *Dec.* 20, 1683.

Mr. Thomas Steil chamberlain to the marquis of Douglas, being prisoner as alledged, entertaining and corresponding with Aaron Smith when he was in Scotland, and providing him a guide to sir John Cochram's house of Ochiltree, who being examined with the said guide and all that appears is, that the said Aaron Smith, under the name of Clark, was recommended by one David Sheriff, innkeeper and stabler of Newcastle, to Steil, as being his acquaintance when he came to Jedburgh, to help him to one that should guide him the way being a stranger, without any suspicion or knowledge of his being a person guilty of any crime or evil design. The Lords upon consideration of the bill appoint a letter to be written to the secretaries to cause examine Aaron Smith upon the time of his coming to Jedburgh, and what past betwixt him and Steil and any other interrogator proper, seeing it is said that the said Aaron Smith denied he was ever in Scotland; and that another letter be written to the mayor of Newcastle to examine the innkeeper; and in the mean time allows Steil to be liberat on caution to appear when called, under the penalty of 2,000 marks; and that he shall not go off the country without licence, to prevent any practising with the innkeeper.

ALEXANDER GORDON of Earlston, his Deposition before a Committee of his Majesty's Privy-Council, and two of the Justices. Edinburgh, September 25, 1683.

Alexander Gordon being further interrogate upon the interrogators given in anent the conspiracy in England, declares, That the first time he heard of any design of rising in arms, was at that time when the competition was anent the sheriffs at Midsummer was a year, and then he heard the duke of Monmouth was to head the rebels; and this he had from John Nisbet, and one Mr. Murray a Scotchman then at London, and declares, that in January last the declarant being in Holland, he heard by

general report that the late earl of Argyle was to raise some thousands of Highlanders to assist the rebels in England by making a diversion, and was to get a sum of money for that effect; and that in March last he having received a letter in Holland from John Nisbet then in London, he came over to London, where he met with the said Nisbet and Murray, who told the declarant, they designed to rise presently in England, and to rendezvous in six or seven places at one time, particularly at Coventry and London, and that they computed several thousands in Yorkshire who where to join with them; that Murray desired the declarant to go along with him to meet with the late lords Russel and Gray, and the lord Wharton, (but of Wharton they said they were not very sure, being a fearful man) and with Mr. Ferguson, and spoke of several old officers of Cromwell's that were to be there, but the declarant not being for the present rising, shunned to meet with these persons, or any of them; and both Nisbet and Murray told the declarant, that sir John Cochran was with them, and heard from these two persons, that both the Cessnocks were concerned in that business. As to the letter written by Jo. N. of the 20th of March, and directed for the declarant at Rotterdam, declares that John Nisbet wrote the said letter, and that under the metaphor of trade throughout the whole letter, is meaned the design of rising in arms and a rebellion; and that by the word dispatching the old rotten stuff, is meaned either the excluding the sectaries from joining with them, or destroying the government, both civil and ecclesiastical, which last the declarant supposes rather to be the meaning of the words; and that by the factors are meaned their emissaries for carrying on the rebellion; and for that strange thing that was to fall out that week or the next, the declarant thinks is meaned the sudden muster of the rebels; in the close of the letter which says, things are full as high as I tell you, is meaned that the rebellion was instantly to break out; and having met with John Nisbet after his coming from Holland, the said Nisbet explained to him that the sense of the said letter was as is abovesaid.

As to the little letter directed to the declarant under the name of Pringle, of the second of May, 1683, declares that the name of the subscriber, which is blotted out, was so blotted before it came to his hand; but by the contents of it, he knows it is from one Robert Johnstoun, a tenant or vassal to the lord Gray on the border; and that the traders and trading there spoke of, is the designed rebellion; and that the said Robert Johnstoun offered to come into Scotland with the declarant, to have seen some of our disaffected people here, and to have met with them; and that A. Y. mentioned in the said letter, which the letter says laboured to undervalue the disaffected party in Scotland, which he calls your goods, is the name of Andrew Young, who stays about Newcastle, whom he supposes to be a suspected person, because he was afraid colonel Struthers would apprehend him: and that he supposes the way that that letter came to his hand, was from some person that was at a meeting at Tweeds-Moor about that time, where were present several of these people that had commission from the several districts, but he himself was not at that meeting. Sic subscribitur, ALEX. GORDON.

LINLITHGOW, I. P. C.

Here follows the Letter signed Jo. N. which was found upon Earlston.

Sir; On Saturday last I had the occasion of seeing a letter from you, directed for Mrs. Gaunt, in whose absence Mrs. Ward had received it, at the reading of which I was not a little troubled, considering my full resolutions signified to you in my last; for effectuating of which I had spoke for passage, and taken my farewel of mother Gaunt, she going into the country: and that very week I was set upon by that gentleman with whom I stay, and Jo. Johnstoun with some others to stay but a month, and if that did not accomplish somewhat in hand to help trading, then I should be no longer detained. After I was prevailed to retract so far, I ordered Jo. who had time at command, to give you an ample account of matters; and withal, Jo. was desired by our friends from Scotland to stand here in my place, the like engagements of secrecy, &c. being taken, and thereupon I ordered him to shew you the grounds of my staying, and to desire if you inclined to cross the water to come this way, but since many are the confused, yea troubled thoughts that have possessed me for yielding, concerning which, as also my yielding to it, take the subsequent account.

In my last, or it precedent to it, I shewed you that trading was very low here, and many breaking, which has made the merchants (such as they are) to think that desperate diseases must have desperate cures: and while they have some stock, it will be better to venture out, than to keep shop and sit still till all be gone, and then they shall not be able to act, but let all go: which resolution I thought a thing not to confide in, seeing the most of them are fire-side merchants, and love not to venture where storms are any thing apparent. But about my departing they shewed the model of affairs in such order, that I see venture they must, and venture they will; whereupon first demanded how our trade would be carried on. Answer, they knew well what goods had proven most prejudicial to the trade, and therefore they thought to insist upon negatives, in which whatever I proposed is assented to, as I find; and thus they thought best to still some criticks in the trade: and by this means first to endeavour the dispatching the old rotten stuff before they order what to bring home next. This looked somewhat strange to me, but when I consider all circumstances, I think they for themselves do best in it: for our merchants I made account

only to have had some stock for to set the broken ones up again, and so bid them here farewell, and they to try their way, and we ours; since they think fit that some of these whom we have found (as you will say, when you hear them named) treacherous dealers in our trade, consulted, and accordingly have done: whereupon I fear, or rather hope that our merchants, though broke, will rather desire to live a while longer as they are, than join with such, &c. to advance the trade; unless surer grounds of their fidelity be gotten, than is, or can be expected, and this is the bottom of all my sorrow. But to proceed, I find (if all hold that is intended) that they think it is almost at a point to set forward, if they had their factors home, who are gone to try how the country will like such goods, as they are for, or against the making sale off. Friends, I mean merchants, wrote to me, that after I had spoken to you, possibly you might come this way, the better thereby to advise them what to do in this case, for I have signified somewhat of it to them, but not so far as this; because I thought to have seen you long ere this time. But I hope you will not misconstruct of my staying, seeing in it I designed nothing but advancement of our trade; but once this week these factors sent for will be here, and then matters will in instanti, either off or on, break, or go through. Wherefore in reference to friends, I desire you will advise me what to do, if you cannot, or think it not convenient to come here; if you do, let a letter precede, and if any strange thing fall out this week or the next, I will again post it towards you; I think when this and the next week is gone (and no news comes from you) that I shall set forward, being still so ready, as that in 12 hours I can bid adieu: the Whiggs are very low as well in city as in the suburbs, all meetings being every Sunday beset with constables to keep them out, and what they get is stolen, either at evening or morning. This winter many of the great bankers and goldsmiths in Lombard-street are broken and gone: the Bantam factory in the Indies is taken by the Dutch: confusion, confusion in town and country, such as you never saw. Mrs. Ward and several others desire to be remembered to you. My endeared respects to yourself and B. with the young men arrived. This I have writ in short, and in haste, expecting a line with as great haste as you see is needful, for matters are full as high as I tell you. Farewell, From your friend and servant, while

London, March 20, 1683. Jo. N.

P. S. Be sure that you direct not for Bethal-green; but for me at Mr. Mead's in Stepy, near London.

A LETTER as it was written with ARGILE'S own hand, which was addressed to Major Holms, and marked No. 3. June 21.

Though I cannot by this post send you a full account of your affairs, yet I send you as much as may make you take measures what bills to draw upon me, which I hope you will fully understand by Mr. B.'s help; the whole account amounted to several pages; but I only give you one to total, as sufficient.

I gone so I and refuse object first you time much is way the our would of altogether concerned do upon absolutely do to do effectually as that it be to is at all be 33575942424457576?9 money 36 47575657 of and to 692247365350?57 and they have is at be that no some their 2345535958, &c. 50000 4548464758 part as against the but concurrence from be less nor like place and interest is small and power against need do bring which Birch that cannot time are out upon an 324753235657 to 564442565948584441367 projected meat very may little done the been purse I to shall my lists I to great venture they prospect provided have can willing God given conferrence week Brown I of things said some the now their my head guard mention 32434467574840?257 things which to your hope some ago as over some if do spoke for of know and encouragement confer have and self be order resolve and to reckon all and undertake honest or was far be shooes undertaking many of to for purchase was as is the a possibly us of by force it the so how the credit for time Birch and some greatest them concerned will for and to and 404843 station good may only the if more will if should expect tollerably standing and by and necessar the the more the hazarded to it 8 and think urge to necessar I the that so affairs have business very I possible of I send here against my till what little upon know not which money 25405748575840524244 I service any what shall resolve the at did least effectually thought and far if business reckoned for still the there I or stuck you upon money by first sum if then bills 26435640465359 52 5769455356424157 well that 38414440585159505-8458591357 need trouble something very a frighten the probably not 2000 the tho the once for and 575942 4244575735 will 4057 57485-75840524244 and to money could foolish Browne many the not to Gods Brand besides stay Job seat yet to proposed 322240565157 a deal the things as all once less any drink well on know I as pay whether never the received to any calculate about to that that the such with you I other I I for considerable be particular add I are of lest I but all have it enemies to cannot to friends made part I writ wish may be service Mr. an whole there consider persons it when knowing any and payments to I it low shall little little meaning intelligence thing out had which tents usual whole with 673151485048584840 and by the more of if but the that blessing raise a 5456535844575840525847535-65744 can Virgins supply to call 485650405243 not keep imaginable tho them 4853485244 standing many number 25 4753565733 only at standing a 515950584858594 3 first considerable with more can them countrey 425351514052434443 in and there 40565157 it was weeks half I so to at 600 think needs precise I the the it a within what requisite not sum truly this

grounds to say Mr. thing nor know they as hath the grounds occasioned I they both do is red only let I distance in I half in I the little would 4037485758405242 first shall number very 1000 and the consider small confess them work proposed pleased cannot are 2000 Brand it 541-453545044 the be 40565157 then be 4044440-56485246 1604584744564443 little 45535642-4457575844565048524 have the but it will 455356574457 and as we yet together only it for by it consider imploy better interest small so to some 47535657 a future the to total the absolute of and designed and waggons are but of proposed or and because what add as out meddle touch of I knowing merchant there it that what is 404540485644405844515458 Red I not but I of expect of up I enforce at be that should a is, in considerable put I done this all have by the not to had before able will I if and a they have will is for 5753 5043485535956 shall necessars, the or of if is is they very incident for the dayly not cloaths necessar to there the necessar best of the 60405639 events little to hope 5644564-457 many sum were for so in we them more will in and it had any many yet be may all 51485048584840 and will it without and not but more got triple on his very 45535959 now be God and but is what a if odds, it as near named not brush of not less power proposed an of thought my and go you in or resolved so I intend hear them our 45564844524357 to neither to will much till any the know on in proposition could what other I of could be the and be but that easie were I all differ was absolutely soon more to sent above at well right foot their together provisions the suddenly that 404258485352 will take will of the be unwilling the will can at is get Brand not 40565157 no should the much their not and men the are be while do to advantage the husbanding for number is be for 574-7534457 only to whole provisions charges good can to I I my meddle money as freely for the and be estates do project all after see be I it such you all 47535657 the yet I distance to dare them direction Gods hands in on not prevent and have some help may from a a be pray very I I Necessars and that to a occasion prices the submit they but not own had made be do men some of sum be necessar 47535657 such bestowed nothing they one it money of Brand not to sent engaged whole with a concerned own money next prove money far then but some impossible first be be most to of 4744564858535657 20000 to up do tho there done case and yet number without hard appointed lest 1200 like give will after necessar proposed as should leave hard had number I peremptor I 673347535657 stood possibly those thought juncture I do mention this as as mean other I as neither give know offer have, Adieu.

The total sum is 128 *gil.* 8 *st.* which will be payed to you by Mr. B.

Follows in plain writing on the back of the Letter.

I have found two of the books I wrote to Mr. B. were lost, I believe he hath the blue one; we have received his letter: I have nothing more to say to him at present; I hope he knows how to write to me, and understands my address, and to instruct you; if he do not, I have lost six hours work. Adieu.

The DECYPHER of the said LETTER as it was done in England.

Sir; *June* 21.

Though I cannot by this post send you a full account of your affairs, yet I send you as much as may make you take measures what bills to draw upon me, which I hope you will fully understand by Mr. B.'s help; the whole account amounted to several pages: but I only give you one to total, as sufficient.

I gone so I and refuse object first you time much is way the our would of altogether concerned do upon absolutely do to do effectually as that it be to is at all be 33 success 69 money 36 horse of and to 69 2 h 36 orse and they have is at be that no some there 23 foot &c. 50000 fight part as against the but concurrence from be less nor like place and interest is small and power against need do bring which Birch that cannot time are out upon an 32 ho 23 rse to recruited projected meat very may little done the been purse I to shal my lists I to great venture they prospect provided have can willing God given conference week Brown I of things said some the now there my head guard mention 32 de 67 signs things which to your hope some ago as over some if do spoke for of know and encouragement confer have and self be order resolve and to reckoning all and undertake honest or was far be shoes undertaking many of to for purchase was as is the a possibly us of by force it tho so how the credit for time Birch and some greatest them concerned will for and to and *and* station good may onely the if more will if should expect tollerably standing and by and necessar the the more the hazarded to it 8 and think urge so necessar I the that so affairs have business very I possible of I send hear against my till what little upon know not which money 25 *assistance* I service any what shall resolve the at did least effectually thought and far if business reckoned for still the there I or stuck you upon money by first sum if then bills 20 *dragoons* 69 *forces* well that 38 *beat multitudes* need trouble something very a frighten the probably not 2000 the tho the once for and *success* 35 will *assistance* and to money could foolish Brown many the not to Gods Brand besides stay job seat yet to proposed 32 22 *arms* a deal the things as all once less any drink well on know I as pay whether never the received to any calculate about to that that the such with you I other I I for considerable be particular add I are of lest I but all have it enemies to cannot to an account to friends made part I write wish may be service Mr. an whole there consider persons it when knowing any and payment to I it low shall little little meaning intelligence thing out had which tents usual whole with 67 31 *militia* and by the

more of it but the that blessing raise a *Protestant* horse can virgins supply to call Ireland not keek imaginable tho them *joyn* standing many number horse onely at standing a multitude first considerable with more can them country' *commanded* in and there *arms* it was weeks half I so to at 600 think needs precise I the the it a within what requisite not sum truly this grounds to say Mr. thing nor know they as hath the grounds occasioned I they both do is *red* only let I distance in I half in I the little would *assistance* first shall number very 1000 and the consider small confess then work proposed please cannot are 2000 *Brand* it *people* the be *arms* them be *appearing* gathered little *forces Stirling* have the but it will *forces* and as we yet together only it for buy it consider imploy better interest small so to some *horse* a future the to total the absolute of and design'd and waggons are but of proposed or and because what add as out meddle touch I knowing merchant there is that what is *affair attempt red* I not but I of expect of up I enforce at be that should a is in considerable put I done this all have by the not to bad before able will I if and a they have will is for *soldier* shall necessars the or of if is is they very incident for the daily not cloaths necessar to their the necessar best of the *war* 39 events little to hope *repress* many seen were for so in we them more will in and it has any many yet be may all *militia* and will it without and not but more got triple on is very *foot* now be God and bat is what a if odds it as near named not brush of not less power proposed an of thought my and go you in or resolved so I intend hear them our *friends* to neither to will much till any the know on in proposition could what other I of could be the and be but that easie were I all differ was absolutely soon more to sent above at well right foot their together provisions the suddenly that *action* will take will of the be unwilling the will can at is get *Brand* not *arms* no should the much there not and men the are be while do to advantage the husbanding for number is be for *shoes* only to whole provisions charges good can I I my meddle money as freely for the an be estates do project all after see be I it such you all *horse* the yet I distance to dar them direction God's hands in on not prevent and have some help may from a a be pray very I I necessars aid that to a occasion prices the submit they but not own had made be do men some of sum be necessar *horse* such bestowed nothing they one it money of *Brand* not to sent engaged whole with a concerned own money next prove money far then but some impossible first be be most to of *Herctors* 20000 to up do tho there done case and yet number without hard appointed least 1200 like give will after necessar proposed as should leave hard had number I peremptor J 67 33 *horse* stood possibly those thought juncture I do mention this as as mean other I as neither give know offer have. Adieu.

The total sum is 128 *gil.* 8 *st.* which will be paid to you by Mr. B.

Written in plain sense on the back of the Letter.

I have found two of the books I wrote to Mr. B. were lost, I believe he hath the blue one: we have received his letter. I have nothing more to say to him at present: I hope he knows how to write to me, and understands my address, and to instruct you, if he do not I have lost six hours work. Adieu.

The COPY of the said LETTER, as it was given in by Mr. Spence, according to the plain sense thereof, without the preface or postscript, being set down already with the cypher and decypher.

I know not the grounds our friends have gone upon, which hath occasioned them to offer so little money as I hear, neither know I what assistance they intend to give; and till I know both, I will neither refuse my service, nor do so much as object against any thing is resolved, till I first hear what Mr. Red, [Carstares.] or any other you send, shall say; only in the mean time I resolve to let you know as much of the grounds I go on, as is possible at this distance, and in this way. I did truly in my proposition mention the very least sum I thought could do our business effectually, not half of what I would have thought requisite in another juncture of affairs; and what I proposed I thought altogether so far within the power of those concerned, that if a little less could possibly do the business, it would not be stood upon: I reckoned the assistance of the horse absolutely necessary for the first brush, and I do so still: I shall not be peremptory to urge the precise number named, but I do think there needs very near that number effectually; and I think 1000 as easy had as 8 or 600, and it were hard that it stuck at the odds: I leave it to you to consider if all should be hazarded, upon so small a differ. As to the money, I confess what was proposed is more by half than is absolutely necessary at the first week's work, but soon after all the sum was proposed, and more will be necessary, if it please God to give success, and then arms cannot be sent like money by bills: there are now above 1200 horse and dragoons, and 2000 foot at least of standing forces in Brand [Scotland.] very well appointed and tollerably well commanded, it is right hard to expect that country people on foot, without horse, should beat them the triple their number; and if multitudes can be got together, yet they will need more arms, more provision, and have more trouble with them: but the case is, if something considerable be not suddenly done at the very first appearing, and that there be onely a multitude gathered without action, though that may frighten a little, it will do no good, the standing forces will take up some station, probably at Stirling, and will to their aid not only have the militia of twenty thousand foot, and two thousand horse, but all the heretors, &c. to the number

it may be of fifty thousand; and though many will be unwilling to fight for the standing forces, yet the most part will once join, and many will be as concerned for them, as any can be against them: and though we had at first the greatest success imaginable, yet it is impossible but some will keep together, and get some concurrence and assistance, not only in Brand, [Scotland.] but from Birch, [England.] and Ireland; it will not then be time to call for more arms, far less for money to buy them, no money nor credit could supply it, we should prove like the foolish virgins: consider in the next place how Brown, [Dissenting Lords,] can imploy so much money, and so many horse better, for their own interest, though the Protestant interest were not concerned; is it not a small sum, and a small force, to raise so many men with, and by God's blessing, to repress the whole power of Brand, [Scotland] that some hope are engaged against us, besides the horse to be sent, need possibly stay but a little while to do a job, if future events do not bring the seat of the war to Brand, which is yet more to the advantage of Birch, [England,] as to the total of the money that was proposed by the best husbanding it, cannot purchase arms, and absolute necessaries for one time, for a militia of the number they are to deal with, and there is nothing out of the whole designed to be bestowed upon many things usual, and necessary for such an undertaking, as tents, waggons, cloaths, shoes, horse, horse-shoes; all which are not only necessary to be once had, but daily to be recruited, far less out of the whole sum projected, was any thing proposed for provisions of meat or drink, intelligence, or incident charges; some very honest well-meaning, and very good men, may underake on little, because they can do little, and know little what is to be done. All I shall add is, I made the reckoning as low as if I had been to pay it out of my own purse; and whether I meddle or meddle not, I resolve never to touch the money, but to order the payment of necessaries, as they shall be received; and I shall freely submit myself to any knowing soldier for the lists, and any knowing merchant for the prices I have calculated, when there is an occasion to confer about it, it will be a great encouragement to persons that have estates to venture, and that consider what they do, that they know that there is a project, and prospect of the whole affair, and all necessaries provided for such an attempt: if after I have spoke with Mr. Red, [Carstares,] I see I can do you service, I will be very willing; If I be not able, I pray God some other may; but before it be given over, I wish I had such a conference as I writ of to you a week ago, for I expect not all from Browne, [Dissenting Lords,] some considerable part of the horse may I hope be made up by the help of your particular friends. I have yet some things to add, to enforce all I have said, which I cannot at this distance; and some things are to be done to prevent the designs of enemies, that I dare not now mention, lest it should put them on their guard, I have a considerable direction in my head, but all is in God's hands.

The manner of Decyphering is explained more at large in another Book, called, An Account of Discoveries made in Scotland, &c.

Part of WILLIAM SPENCE his Deposition. At the Castle of Edinburgh, the 19th of August, 1684.

Mr. William Spence, of the age 33 years, or thereby, not married, solemnly sworn, depones, That in the paper subscribed by him; the letter dated June 21, and the other without date, marked A, are written plain and in the true sense, so far as his knowledge reaches, and that he had no key to open the letters with, but the alphabetical cypher: that by the 128 Gilders, 8 Stivers, mentioned in the end of the long letter he understands that it is the key thereof; and by the payment of the same, he understands the way of using it. That he does truly believe there was an insurrection intended, within these two years; and as for what is to come, he cannot tell what the people abroad may be doing: that he had often heard of designs and associations; but that they were directly intended to hinder the duke his succession to the crown, he cannot say: for all that he understood was pretended for the ground of any designs of arms, was the defence of the Protestant Religion, the liberties of the kingdom; and if against the duke his succession only in so far as that might be prejudicial to these; and that he thinks upon the king's death troubles may probably arise: that Mr. West, to whom the letters were directed, was not one of that name; but Major Holms, to the best of his knowledge: and this is the truth as he shall answer to God. Sic subscribitur. W. SPENCE.

The INFORMATION of ROBERT SMITH, formerly of the Parish of Dunscore, in the Sheriffdom of Dumfreis, in the Kingdom of Scotland.

At all the conventicles for near two years before the rebellion in the year 1679, there were great contributions of money (which were cheerfully given) under the pretence of a subsistance for their ministers, and the poor of their persuasion (the only design that was known to the meaner sort of people) but the greatest part of the money was employed for arms and ammunition for a general rising: in order whereunto the phanatics in the month of April, May and June, 1679, were preparing themselves, by keeping several great field conventicles (both in the West and South) in which were considerable numbers of armed men. And although they were generally very fond and forward to put their design in execution; yet it was hastened a month sooner than was intended, by the skirmish that happened about

the middle of June within two miles of Lowdon-hill, between a party of his majesty's forces under the command of captain (now colonel) Graham of Claverhouse, and a strong field-conventicle, in which I was myself with a party of a troop of horse (levied in Nithsdale in the end of May, and beginning of June) whereof I was cornet, under Mr. William Ferguson of Caitlock, captain, and John Gibson of Auchinchein, lieutenant. The same night after that skirmish, I was at the earl of Lowdon's house with Robert Hamilton, John Balfour, and David Haxton (both murderers of the late archbishop of Saint Andrews) John Ker in Minehole, and several others, in number about twenty seven horse. The earl himself was in the house, and I saw him pass into the garden; but I did not perceive that he came into our company, though I have reason to believe that Robert Hamilton was with his lordship and his lady in some of the chambers, because I saw him leaving us all of his company in the great hall, and going into the private rooms, where I am sure was my lady, as I do not doubt but my lord was also, for it was from thence that I saw him pass into the garden; but my lady did publicly that night entertain and lodge all the company. The next morning at four of the clock we came from that earl's house, and made all the haste we could to Hamilton, in order to join the body that we had parted with the day before; and the next day we all marched to Glasgow, where (the morning after) we were beaten by some troops and companies of the king's forces, and thereupon returned to Hamilton. From thence I went in company of Mr. David Williamson (who was a preacher and a captain) with sixscore horse to the shire of Galloway, where we met and joined six troops of horse and about as many companies of foot that were levied in that country and Nithsdale for our assistance. Thereafter we went into Dumfreis where we staid a night, and had notice of the king's forces coming to the Kirk of Shots; whereupon we marched with all possible diligence to join the rest of the rebels at Hamilton; seizing all the arms and horses that we could find by the way, especially at Drumlanriq, Thorn-hill, Sanehar, Cumnock, Cesnock, Newmills and Strevin; but at Cesnock we received four hundred lances, which we were told were the free and voluntary gift of sir Hugh Campbell, the father, and sir George, the son. There was one passage in this march, which I cannot forbear to relate, viz. That as we were passing by the old castle of Treve (where his majesty of blessed memory had a garrison, in the beginning of the unhappy troubles of his reign) old Gordon of Earlstown (who in few days after was killed at Bothwell-bridge) in my hearing spoke to the officers that were about him as followeth, Gentlemen, I was the man that commanded the party which took this castle from the late king, who had in it about 200 of the name of Maxwell, of whom the greatest part being Papists we put them all to the sword, and demolished the castle, as you see it: and now (though an old man) I take up arms against the son, whom I hope to see go the same way that his father went: for we can never put trust in a covenant-breaker; So gentlemen, your cause is good, ye need not fear to fight against a forsworn king.

Upon Saturday the 21st of June, 1679, the main body of the rebels came to Hamilton, and lay encamped betwixt that place, and Bothwell-bridge until Sunday the 29th, when we were defeated by the king's forces, during which time there came to our camp great store of provisions and arms from Glasgow, Hamilton, Lanrick, Lesmahago, Newmills, and several other places in Clisdale, and the parts adjacent; but I do not know the particular persons from whom they were sent, save only what I have said concerning our receiving the 400 lances at Cesnock: but about a week before our coming to that place, as we were passing by the earl of Galloway's house of Garlis, his brother the laird of Rymstone came to see some of the gentlemen that were of our number, and accompanied us 10 or 12 miles, returning afterwards to his house; but before his going he gave assurance that both his brother, the earl of Galloway, the lord Kenmore and himself were our friends: and I did hear him giving great encouragement to the meaner sort of people that were in arms with us, by bidding them to be chearful and courageous; for he did assure them that they had very good friends in the country; and we did believe that within few days thereafter, as well the earl of Galloway, and lord Kenmore, as the said laird of Rymstone would come and join with us, and had we been able to continue some time longer together in a considerable body, and had given the least fail to the king's forces, we expected that many persons of great quality and interest, would have joined with us: whereof a perfect account can be given by Earlstown (now a prisoner in Edinburgh) if he will but ingenuously declare what he knows.

The night before the fight, the rebels (one Hamilton Moor) held a council of war, consisting of Robert Hamilton, David Haxton of Rathillett, John Balfour, Major Ledmont, —— Mackcrellan of Barscob, —— Gordon of Home, Mr. William Ferguson of Caitloch, (my captain aforesaid,) —— Gordon of Craig, —— Gorton of Newtoun, —— Gordon of Earlstone elder, —— Gordon of Earlstone younger, —— Gordon of Craichlaw, captain, —— Mackculloch, —— Macdougall of Freugh, captain John Smith, captain —— Home, Mr. William Cleland, a captain of horse, Mr. James Fowler, a captain of foot, Andrew Story, a captain of foot, and several other gentlemen and officers, whose names I do not at the present remember, but do well know the places of their abode. There were also several of the ministers in this council of war, viz. Mr. John Welch, Mr. Robert Archibald, Mr. Alexander Hasty, Mr. David Williamson (who also as

I have said before was captain of a troop of horse) Mr. David Home, Mr. John Blakater, Mr. John Blackloth, Mr. Donald Cargil, Mr. John Kid, Mr. John King, Mr. John Dick, Mr. Thomas Forrester, Mr. John Dickson, Mr. Robert Sandilands, Mr. Patrick Vernatt, and Mr. John Harraway with some others: but at this time Mr. Richard Camron and his brother Mr. Michael, with some few other ministers were gone to Holland with monies to pay for arms that were formerly brought by Kersland's son (as I was since informed) and some other phanaticks living there. In this council there were very hot debates betwixt Welch's party (the most considerable of the two) who were content to lay down arms upon their getting an indulgence, and Robert Hamilton's party who would rest satisfied with nothing less than the extirpation of episcopacy, and setting up a pure presbyterian government, as they called it. And the differences were so great betwixt them, that the choice of their chief officers (which was designed to have been that night) was put off till the next day, (being Sunday) at 10 in the forenoon; but were prevented by the king's army coming before sun-rising, to the North-end of Bothwel-bridge: however, they did that night appoint two commissioners, (viz. Mr. David Home and captain Mackculloch) to treat for them with the duke of Monmouth: on whom they waited accordingly about half an hour before the fight, but returned without any success. The general discourse amongst the rebels on Friday and Saturday was, that the lord Burgany would certainly come in to them the Monday following (had not the fight on Sunday prevented him) to command their forces in chief, and to appoint such field officers, both for the horse and foot as he should think fit, unless they had been appointed by the council of war before his coming; but in either of the cases they were to have had their commissions from him: for it was most certain, that they would not allow Robert Hamilton to be their commander in chief, the rebels did frequently and openly express the great confidence they had in some of their friends about the duke of Monmouth, and particularly the lord Melvil, the lord Newark, sir Thomas Armstrong, and sir —— Hamilton of Preston (the elder brother of Robert Hamilton) besides some others whom I do not now remember, but could know them, if I should hear their names.

When the king's standing forces begun to pass the bridge, the chief officers of the rebels were consulting what was fit for them to do, and it was resolved that they should all march away in good order towards Carrick, and the ruins of Galloway, until they should be furnished with arms and ammunition, which were landed at Borrostenness (besides what was expected from Holland) but could not then be brought to them, by reason of the king's army having been interposed between them and that place. And moreover they were in expectation of considerable reinforcements both of horse and foot, which were on their march, from several parts of the country. But their chief encouragement to prosecute this design, was the confidence they had, that the duke of Monmouth would not put any hardship upon them; which I have good reason to believe was true; for when I was in company with all the rebels horse (about 1,600 in number) less than a mile from the field of battle, marching up on a rising ground (in our retreat) I looked over my shoulder, and saw the king's horse at a stand, after they had pursued us a little way, which we looked upon as having been done to favour our escape: for if they had followed us, they had certainly killed or taken us all, a few only excepted, who were very well mounted; and we were often afterwards told, that they were stopt by the duke of Monmouth's positive command, when they were violently pursuing us, after they had quite broke our foot (consisting upwards of 4,000,) and were within less than half a mile of the body of our horse (running away) which then was in great consternation and confusion: however, we marched that forenoon in as good order as we could (12 miles over a moor) to New-mills, without any of his majesty's forces giving us the least disturbance, where we separated, some going towards Air, others to Galloway, and the rest to Nithsdale; amongst which last, were the most resolute of the officers, to the number of betwixt 45 and 50; who continued together in arms, going up and down the country in Galloway, Nithsdale and other places thereabouts (after all the rest were scattered) until a party of the king's forces, under the command of Claverhouse, came into Galloway, and then we (for I was myself all along with that small remainder of the rebels) went into the West, where we were most kindly entertained in many places, though I do not remember the names of the persons by whom: but I do well know their habitions; and I was afterwards told by Mr. Richard Camron, and his brother Mr. Michael, that they and several others were sheltered and entertained by sir Hugh, and sir George Campbells at their house of Cesnock. After some stay in the West, I returned to my own house (Kilroy) within four miles of Dumfreis, where having staid about five or six weeks, the said Mr. Richard Camron, and his brother Mr. Michael (who were some short time before returned from Holland) came to see me, and stayed with me two nights: they told me, that they had bought four small brass guns with a considerable quantity of ammunition and fire-arms, which they had in a readiness, to have been shipped at Amsterdan, in order to their having been landed at Greenock) when they received the news of the defeat at Bothwell-bridge: whereupon they put up the said guns, arms and ammunition in a secure place in Amsterdam, until there should be occasion for them. The Sunday after their coming to my house, Mr. Richard Camron kept a field-

conventicle within a mile of sir Robert Dalyell's house, where were about 3,000 in number. The occasion of this meeting (where I was present) was to see how the country stood inclined, and who would join with him. From thence the said Mr. Richard carried with him 20 men (whereof I was one) to the laird of St. John's Kirk (a cousin of the lord Carmichael's, and I suppose his name is also Carmichael,) whose house is about two miles from Biggar, and towards 30 from Edinburgh where we stayed four days: during which, there was several conventicles kept in the house, at which, the laird and his lady were constantly present. And the Sunday after we kept a field-conventicle on Tinto-hill, to which, there was people gathered from all parts of the country thereabout, to the number of between three or 4,000, whereof many were well armed. From this hill I went with Mr. Richard Camron aforesaid, and upwards of 20 more to the lady Gilkerscleughs's house (a widow lady) in Clidsdale, where we stayed a week, and kept several conventicles with her. About this time the duke was come to Scotland, and whilst we were in this house, it was one night at supper proposed by Haxtoun to kill his royal highness, the said lady being present, together with the two Camrons, four gentlemen of the North, whom I knew not, and two of my neighbours whose names are John Harper, and Robert Nalson.

This Haxtoun said he would do it himself if he could come at him; and thought, that it might best be done when the duke was at dinner; wherefore he asked, if there were any there that would go and observe all the manner of his royal highness's dining? whether people might get into the room to see him at dinner? and if there were any number, or crowds of people got in? Saying, that he was too well known to go upon this errand himself. So Mr. Michael Camron undertook it, and took me along with him, who were particularly instructed to observe, whether people could go in with large coats or cloaks upon them, and women with plaids; and whether they could pass the sentinels with their swords: and according as he should find matters, he would afterwards contrive the best way to effect the business. Accordingly we two went, and saw the duke at dinner; but as we returned to our lodging, at one Danald Mackay's house, at the head of the Cow-gate, near the grass-market, Camron (by chance) met there a man which knew him; whereupon we both betook ourselves immediately to our horses, and were pursued by 12 of the king's dragoons, who followed us so close, that we were forced to part company; and I went to my own house, where being again in danger by a party of Claverhouse his troop, and not thinking myself safe, I came into England, where I continued three years, and was at many Presbyterian house conventicles in Shrewsbury, Brummigham and Bristol; but never see a field-conventicle in this kingdom, save one at Clee hill (some few mile distant from Ludlow) upon a Sunday in May, 1681, where were met to the number of upwards of 1000; and some of note were amongst them; but I do only remember the names of Mr. Burton (a lawyer whose country-residence is in Shropshire) and Mr. Wardin, a merchant in Brummigham, besides the two ministers who preached there, whose names are Mr. Thomas Eaglesall, who lived in a little market town (called Kinver) in Worcestershire, near justice Foley's house, and Mr. Thomas Case, who lived near Shrewsbury, and their sermons were wholly tending to raise faction and sedition, in the same manner as I have too frequently heard in the field-conventicles in Scotland. About a year and half ago I went over into Holland, when I saw the (since deceased) earl of Shaftsbury, and the late earl of Argile, at Amsterdam; but did not speak with either of them; and saw Ferguson at Rotterdam with whom I spoke; but nothing concerning the government. Then Mr. John Hog, and the other Scotch ministers belonging to Rotterdam (knowing that I was in the rebellion, and could not safely live at home) advised me to enter myself a soldier in the prince of Orange's army; which I did accordingly in colonel James Duglas's regiment, in his own company, where I served a year; and then became known to Mr. Thomas Maxwell, a captain in that regiment, whose country-man I am; and he understanding, that I was fled from home upon the account of my accession to that rebellion, told me how fair an opportunity I had to serve the king, by making a full discovery of all persons that I knew to be guilty of it, or any ways aiding and assisting towards the promoting the same. Adding, that if I would follow his advice in that matter he doubted not of his putting me in a way to deserve and obtain the king's remission, whereby I might be enabled to live peaceably at home hereafter. To which I did very readily consent, and he having thereupon (the 12th of November last) obtained my discharge from my colonel, I have since discovered what I could. And particularly that at Rotterdam (since my said discharge) I had seen several of the Whiggish ministers, some whereof I remember were at Bothwel-Bridge, who came from Scotland about the beginning of September last, viz. Mr. Thomas Forrester, and Mr. Patrick Vernatt (formerly mentioned in the council of war) who preach frequently in the Scots church at Rotterdam, as do Mr. Gordon (who is brother to James Gordon, a merchant there lately deceased) Mr. John Harvey, Mr. George Barclay, and Mr. John Sinclair, all phanatic preachers. The most part of whom (as the above-mentioned Mr. Forrester told me) went over from Holland into Scotland, about the month of August last; but that they found themselves in such daily hazards of being apprehended, that they returned back again to Holland; and that this bad news which they brought over with them, is the reason why Robert Hamilton's late intended journey to Scotland was put off, whither I was sometime before informed he did

intend to go, and to carry arms along with him to some of his friends there. The said Forrester told me further, That they resolve to keep no more field-conventicles, finding, that those meetings have served only to weaken their party, through the seizing of some, and dispersing the rest (which made their friends publicly known) and that now the English and they join councils, and resolve to go on more warily. I did likewise discover, that the manner of the said ministers, their passing to and fro betwixt Holland and Scotland undiscovered, was by their being clad in seaman's cloaths, and working in the ships as sea-men. As also, that I was persuaded, before they shall attempt any thing towards a new rebellion, or making use of the arms, that the two Camrons left in Amsterdam (which are now in the custody of the late earl of Argile, as I was told about nine weeks ago in Utrecht, by sir John Cochran's second son, and Mr. William Cleland, mentioned in the council of War) they will first endeavour to dispatch the king; and that being done, they doubted not but they could soon overcome the duke, and all others that would oppose them: which I heard myself discoursed in a meeting about two months ago, at Mr. Thomas Hog, a phanatic preacher his house in Utrecht, where were present (besides Mr. Hog, and myself) sir John Cochran's son, and Mr. Cleland, already mentioned, Mr. James Steward, the lawyer, his lady, the lady Kersland, and her son, with several others, whose names I do not remember: but this language they speak only amongst their confident friends: for they make the common sort of people believe that there was no such thing as a phanatick-plot; but that the raising of that report was a contrivance of the Papists, to make use of false witnesses, for taking away the lives of true Protestants; which I have often heard, not only discoursed, in houses where some of the ordinary sort of people were in company; but also preached in the churches, where the sermons (for the oath) to bring up their children in the true protestant faith, and in the discipline and doctrine of the Kirk of Scotland, according as they are obliged by the solemn league and covenant; and at their communions, debarring always from their sacrament all such as have not taken the covenant, and do not adhere to it. But of all the fugitive preachers lately gone over from Scotland into Holland, none is more perversely violent against the government, than Mr. John Sinclair (who for many years was minister, and kept a boarding school at Ormiestoun) whom about twelve weeks ago I heard preach in the Scotch Church at Rotterdam; and a great part of his sermon was railing against the duke and the privy council of Scotland, saying, that he (meaning his royal highness) was a rebellious enemy of God; and had got such a hand over those perjured rogues (meaning the lords of the privy council) as they all intended to overturn the Protestant Religion and to introduce popery; which (he further said) could very easily be done, considering the small difference that is betwixt them since episcopacy was re-established; and in his prayer after sermon, I heard him pray earnestly, That God might open the king's eyes, to let him see the evil of his ways, and turn from it; otherwise, That God might take him out of this world, from being a curse, and a scourge to his holy people. And further prayed, That God would turn the counsels of his counsellors, as he did that of Achitophel into nothing.

The late earl of Argyle lives now in the province of Frisland, where he has a small estate, purchased partly by his father, and partly by himself; upon one of their family or tenants foretelling many years ago, that they should be driven from their estate in Scotland, as I was often told in Holland, particularly by Mr. John Hog minister of the Scotch church in Rotterdam and Mr. John Pitcairne, who keeps a meeting-house at Utrecht. The earl of Lowden with two servants only, and sir James Dalrymple of Stair with his whole family, live at Leyden, besides Mr. Douglas (a minister) and some few more whose names I do not remember. There are many phanatick house-keepers in Rotterdam, who harbour the rebels and fugitives that come over from Scotland, viz. Robert Gibbs, Mr. Livistoune, John Gibbs, Mr. Russel, James Delapp, James Thompson, John Greirson, James Nory, John Jack, George Weir, all merchants, and the widow of the lately deceased James Gordon, merchant, whose house was the common receptacle of the chief of those rebels and fugitives. The gentlemen that I left at Rotterdam are, Mr. Denham of Westsheills with his family, captain William Cleland, John Belfour, with his family, captain William Ferguson of Caitloch with his family, captain Andrew Story: The ministers there are Mr. John Hog, Mr. Robert Flemming (settled preachers of the Scotch church) Mr. John Harraway, Mr. Thomas Forrester, Mr. Alexander Hasty, Mr. Patrick Vernat, Mr. John Blakater, Mr. —— Gordon, Mr. George Barclay and Mr. John Sinclair aforesaid, who is now settled a preacher in the English church at Delfe. At Utrecht I left Mr. James Stewart the lawyer with his family, and his elder brother the laird of Coldnesse, Mr. Cochran, (sir John's second son) the lady Kersland and her son, and six ministers, viz. Mr. Thomas Hogg, Mr. John Pitcairne, Mr. John Ogilvy, Mr. John Veitche, Mr. Robert Ker, and Mr. Robert Menteath, besides some others of less note, whose names I do not remember, I left at Utrecht 3 English gentlemen who lived there for some time before, and go by the names of esquire Packwood, Mr. Smith a merchant of London, and Mr. Jones a Welsh-man, but I do not believe that these are their true names for they fled from England upon the discovery of the late plot, as did likewise several other Englishmen, whom I did often see there, but could not learn their names. I did also see and speak with sir John Cochran, but he and 7, or 8 Scotchmen more (whose names I know not) went two days after my arrival there, to Gilderland, where a great

many of the rebels and fugitives live (as they think) most safe and at ease amongst the boors; for they were afraid of staying at Utrecht (as some of themselves told me) by reason of the spies that they were informed were sent thither from England to make enquiry after such of his majesty's subjects, as lived there. And Mr. Cocran and captain Cleland told me as their friend, that the report amongst our countrymen was that I likewise was sent thither as a spy; which although they did not believe, yet they advised me to be gone away privately, assuring me withal that I was every hour I stayed there in hazard of losing my life. Upon this I returned to Rotterdam, where my credit with that party continued about a week, until I was suspected by my old captain and 3 of the ministers, viz. Harroway, Forrester and Sinclair, who about 7 or 8 weeks ago, carried me with them to church, and there proposed (as a test of my sincerity to the interest of the good cause as it was commonly called) that I should take the covenant and the sacrament with a solemn protestation that I am still (as I have been in former times) an enemy to the king and the present government: All which I refused to do; and then they debarred me for ever from their meetings and company: Nevertheless I did often thereafter insinuate myself into both, though without any success; for I could not recover their good opinion, but on the contrary was daily threatened with the severest effects of their revenge. ROBERT SMITH.

Whitehall, Feb. 24, 1683-4.

The Information of ZACHARIAH BOURNE, taken the 5th of December, 1683.

That Mr. Bayly sat up one night, if not two, with Mr. Ferguson, and went several times in the evening, with him to the duke of Monmouth and the chief managers of the conspiracy: Ferguson told me, he was the chief man for the Scots, next the lord Argyle. The night he sat up with Ferguson, I believe it was about the declaration, for the next day he was going to shew it me, but some body came up to him, and hindered him. Mr. Bayly's great business to meet the chief conspirators was (as Ferguson told me) to get 10,000*l.* for the buying of arms, for the insurrection in Scotland.

Casteres I saw often come to Ferguson, but for any discourse he had with him he never told me of; or with any other but Mr. Bayly, as I can at present remember. ZEC. BOURNE.

The DEPOSITION of Mr. WILLIAM CARSTARES, when he was examined before the Lords of Secret Committee, given in by him, and renewed upon Oath, upon the 22d of December, 1684, in presence of the Lords of his Majesty's Privy-Council.

EDINBURGH-CASTLE, *Sept.* 8, 1684.

Mr. William Castares being examined upon oath, conform to the condescension given in by him, and on the terms therein mentioned, depones, That about November or December, 1682, James Stuart brother to the laird of Cultness, wrote a letter to him from Holland, importing, that if any considerable sum of money could be procured from England, that something of importance might be done in Scotland: The which letter, the deponent had an inclination to inform Shepard in Abb-Church-lane, merchant in London, of; but before he could do it, he wrote to Mr. Stuart above named, to know from him if he might do it; and Mr. Stuart having consented, he communicated the said letter to Mr. Shepard, who told the deponent that he would communicate the contents of it to some persons in England; but did at that time name nobody, as the deponent thinks: Some time thereafter, Mr. Shepard told the deponent, that he had communicated the contents of the letter above-named to colonel Sidney, and that colonel Danvers was present, and told the deponent, that colonel Sidney was averse from employing the late earl of Argyle, or meddling with him, judging him a man too much affected to the royal family, and inclined to the present church-government; yet Mr. Shepard being put upon it by the deponent, still urged, that one might be sent to the earl of Argyle, but as Mr. Shepard told him, he was suspected upon the account of his urging so much; yet afterwards he pressed, without the deponent's knowledge, that the deponent being to go to Holland however, might have some commission to the earl of Argyle, which he having informed the deponent of, the deponent told him, that he himself would not be concerned, but if they would send another he would introduce him; but nothing of this was done: upon which the deponent went over, without commission from any body, to Holland, never meeting with James Stuart above named: He was introduced to the the earl of Argyle, with whom he had never before conversed; and did there discourse what had past betwixt Mr. Shepard and him: and particularly, about remitting of money to the said earl from England; of which, the said Mr. Stuart had written to the deponent, namely of 30,000*l.* sterling; and of the rising of 1,000 horse and dragoons; and the securing the castle of Edinburgh, as a matter of the greatest importance: The method of doing this was proposed by the deponent, to be one hour, or thereby, after the relieving of the guards: But the earl did not relish this proposition, as dangerous; and that the castles would fall of consequence, after the work abroad was done. James Stuart was of the deponent's opinion, for seizing the castle; because it would secure Edinburgh, the magazines and arms. As to the 1,000 horse and dragoons, my lord Argyle was of opinion, that without them nothing was to be done; and that if that number was raised in England to the said earl, he would come into Scotland with them; and that there being so few horse and dragoons to meet them, he judged he might get the country without trouble, having such a standing body for their friends to rendezvous

to; and the said earl said he could shew the deponent the convenient places for landing, if he understood, and as the deponent remembers, where the ships could attend. The deponent remembers not the names of the places. The deponent spoke to the lord Stairs, but cannot be positive that he named the affair to him, but found him shy: but the earl of Argyle told him, he thought Stairs might be gained to them: And that the earl of Lowdoun being a man of good reason and disobliged, would have great influence upon the country, and recommended the deponent to major Holms, with whom the deponent had some acquaintance before, and had brought over a letter from him to the earl of Argyle; but the deponent had not then communicated any thing to the said Holms. James Stuart laid down a way of correspondence by cyphers and false names, and sent them over to Holms, and the deponent, for their use (which cyphers and names are now in the hands of his majesty's officers, as the deponent supposes,) and did desire the deponent earnestly to propose the 30,000*l.* sterling above named to the party in England, and did not propose any less; for as the earl told the deponent, he had particularly calculated the expence for arms, ammunition, &c. But James Stuart said, that if some less could be had, the earl would content himself, if better might not be, but the earl always said that there was nothing to be done without the body of horse and dragoons above mentioned; During the time of the deponent his abode in Holland though he had several letters from Shepard, yet there was no satisfactory account, till some time after the deponent parted from the earl of Argyle, and was making for a ship at Rotterdam to transport himself to England. James Stuart wrote to him that there was hopes of the money. The next day after the deponent came to England, he met with sir John Cochran, who with commissar Monro, and Jerviswood, was at London before he came over; and depones, That he knows not the account of their coming, more than for the perfecting the transaction about Carolina: and having acquainted sir John Cochran with the earl's demands of the 30,000 pound sterling, and the 1,000 horse and dragoons, sir John carried him to the lord Russel, to whom the deponent proposed the affair, but being an absolute stranger to the deponent, had no return from him at that time; but afterwards having met him accidentally at Mr. Shepard's house, where the lord Russel had come to speak to Shepard about the money above-named, as Mr. Shepard told the deponent. The deponent (when they were done speaking) desired to speak to the lord Russel, which the lord Russel did, and having reiterated the former proposition for the 30,000 pound sterling, and the 1000 horse and dragoons, he the lord Russel told the deponent, they could not get so much raised at the time, but if they had 10,000 pound to begin, that would draw people in, and when they were once [illegible] brought to more; but as [illegible] and dragoons, he could say nothing at the present, for that behoved to be concerted upon the borders. The deponent made the same proposal to Mr. Ferguson, who was much concerned in the affair, and zealous for the promoting of it. This Mr. Ferguson had in October or November before, as the deponent remembers in a conversation with the deponent in Cheapside, or the street somewhere thereabout, said, that for the saving of innocent blood, it would be necessary to cut off a few, insinuating the king and duke, but cannot be positive whether he named them or not; to which the deponent said, that's work for our wild people in Scotland, my conscience does not serve me for such things; after which the deponent had never any particular discourse with Ferguson as to that matter; but as to the other affair, Ferguson told the deponent that he was doing what he could to get it effectuate; as particularly that he spoke to one major Wildman who is not of the deponent his acquaintance. Ferguson blamed always Sidney, as driving designs of his own. The deponent met twice or thrice with the lord Melvil, sir John Cochran, Jerviswood, commissar Monro, the two Cessnocks, Montgomery of Langshaw, and one Mr. Veatch, where they discoursed of money to be sent to Argile, in order to the carrying on the affair; and though he cannot be positive the affair was named, yet it was understood by himself, as he conceives by all present, to be for rising in arms, for rectifying the government. Commissar Monro, lord Melvil, and the two Cessnocks were against meddling with the English, because they judged them men that would talk, and would not do, but were more inclined to do something by themselves, if it could be done. The lord Melvil thought every thing hazardous, and therefore the deponent cannot say he was positive in any thing, but was most inclined to have the duke of Monmouth to head them in Scotland, of which no particular method was laid down. Jerviswood, the deponent, and Mr. Veatch, were for taking the money; at one of these meetings it was resolved, that Mr. Martin, late clerk of the justice court, should be sent to Scotland to desire their friends to hinder the country from rising or taking a rash resolutions upon the account of the council, till they should see how matters went in England. The said Martin did go at the charges of the gentlemen of the meeting, and was directed to the laird of Polwart and Torwoodlie, who sent back word, that it would not be found so easy a matter to get the gentry of Scotland to concur: but afterwards in a letter to commissar Monro, Palwart wrote that the country was readier to concur than they had imagined, or something to that purpose. The deponent, as abovesaid, having brought over a key from Holland, to serve himself and major Holms, he remembers not that ever he had an exact copy of it, but that sometimes the one, and sometimes

the other keeped it, so it chanced to be in his custody when a letter from the earl of Argile came to major Holms, intimating, that the would join with the duke of Monmouth, and follow his measures, or obey his directions: this Mr. Veatch thought fit to communicate to the duke of Monmouth; and for the understanding of it was brought to the deponent, and he gave the key to Mr. Veatch, who as the deponent was informed was to give it and the letter to Mr. Ferguson, and he to shew it to the duke of Monmouth; but what was done in it the deponent knows not. The deponent heard the design of killing the king and duke, from Mr. Shepard, who told the deponent some were full upon it. The deponent heard that Aaron Smith was sent by those in England to call sir John Cochran, on the account of Carolina, but that he does not know Aaron Smith, nor any more of that matter, not being concerned in it. Shepard named young Hambden frequently as concerned in these matters.

Signed at Edinburgh Castle, the 8th of September, 1684, and renewed the 18th of the same month.

WILLIAM CARSTARES.
PERTH. Cancell. I. P. D.

EDINBURGH CASTLE, *Sept.* 18, 1684.

Mr. William Carstares being again examined, adheres to his former deposition, in all the parts of it, and depones he knows of no correspondence betwixt Scotland and England, except by Martin before-named: for those gentlemen to whom he was sent, were left to follow their own methods. Veatch, as the deponent remembers, stayed sometimes at Nicholson, stabler's house at London-Wall; sometimes with one Widow Hardcastle in Morefields. The deponent did communicate the design on foot to doctor Owen, Mr. Griffil, and Mr. Meed at Stepney, who all concurred in the promoting of it, and were desirous it should take effect; and to one Mr. Freth in the Temple, counsellor at law, who said he would see what he could do in reference to the money, but there having gone a report, that there was no money to be raised, he did nothing in it, nor does the deponent think him any more concerned in the affair. Nelthrop frequently spoke to the deponent of the money to be sent to Argile, whether it was got or not, but the deponent used no freedom with him in the affair. Goodenough did insinuate once, that the lords were not inclined to the thing, and that before they would see what they could do in the city. The deponent saw Mr. Ferguson, and Mr. Rumsay, lurking after the plot broke out, before the proclamation, having gone to Ferguson, in the beak of Bishopgate-street, at some new building, whether he was directed by Jerviswood, who was desirous to know how things went, Rumsay was not of the deponent his acquaintance before, but they knew as little of the matter as the deponent. This is what the deponent remembers, and if any thing come to his memory, he is to deliver it in betwixt, and the first of October: and this is the truth, as he shall answer to God.

WILLIAM CARSTARES.
PERTH. Cancell. I. P. D.

At Edinburgh, the 22d of December, 1684.

These foregoing pages, subscribed by Mr. William Carstares deponent, and by the lord chancellor, were acknowledged on oath by the said Mr. William Carstares, to be his true depositions, and that the subscriptions were his, in presence of us underscribers.

WILLIAM CARSTARES.
PERTH, Canc.

David Falconer.	QUENSBERRY.
George Mckenzie.	ATHOL.

COPY of the Lord RUSSEL'S EXAMINATION in the Tower.

My Lord Russel asked,

Whether he knows of any consultations tending towards an insurrection, or to surprize his majesty's guards at any time, and by any persons, and by whom?

Whether he hath ever been at Mr. Shepard's house, and how often, and when last?

Whether any lords were in company, and who?

Whether at any time the duke of Monmouth, lord Grey, sir Thomas Armstrong, colonel Romzey, Mr. Ferguson, or any of them were there, and how many, and which of them?

Whether there was any discourse concerning a rising in the West, or any parts of the West, or at Taunton, and what the discourse was, and by whom?

Whether there was any discourse concerning the surprizing the King's Guards at any time?

Whether the duke of Monmouth, the lord Grey, and sir Thomas Armstrong did undertake to view the Guards to see if it might be done, and in what posture they were?

Whether they gave any account that they had viewed the Guards, and how they found them?

What did Mr. Ferguson say at any of those meetings, and by whom was he directed?

Whether he knows of any design for a rising in Scotland? Whether he hath been at any consultations for that end, with any persons, Scotchmen or others, and with whom? What monies the Scotch demanded at first, and whether they did not consent to take 10,000*l.* and how was that or any part of that to be raised, and by whom?

My Lord RUSSEL'S ANSWER to the preceding Interrogatories:

My lord knows of no consultation tending to any insurrection.

His lordship knows nothing of any consultation or design to surprize his majesty's Guards at any time.

His lordship doth acknowledge to have been frequently [divers times] at Mr. Shepard's house.

His lordship cannot precisely set down the time that he was there last.

To the two articles relating to the Lords that were in company at Mr. Shepard's, his lordship answers that he went thither with the duke of Monmouth; but as to the rest of the persons then present, his lordship conceives that he ought not to answer, because there were ill constructions made of that meeting, nor cannot positively remember.

His lordship answers,

There was no discourse as he remembers concerning any rising in the west, or any parts of the west, or at Taunton, nor particularly of Mr. John Trenchard's undertaking, nor any discourse about Mr. John Trenchard as he remembers.

His lordship answers there was no discourse at Mr. Shepard's about surprizing the Guards, nor of the duke of Monmouth's, my lord Grey's, nor of sir Thomas Armstrong's undertaking to view the Guards; nor was there any account there given by the said persons of their having viewed the Guards, nor how they found them.

Nor was there any such undertaking elsewhere to his knowledge.

To the question what Mr. Ferguson did say at any of those meetings, his lordship answers that he cannot tell what Mr. Ferguson did say there, nor doth he own that Mr. Ferguson was there.

His lordship knows of no design for a rising in Scotland, nor knows any thing of the whole article relating to Scotland, nor any part of it.

His lordship hath heard general discourses of many distressed people, ministers and others of the Scottish nation that were fled and that it were great charity to relieve them.

This examination was taken the 28th day of June, 1683, before us.

L. JENKINS, J. ERNLE,
R. SAWYER, H. FINCH.

NOTES of some things confessed before his Majesty and the Council, taken out of the Books of Minutes.

John Rouse confessed that money was collected in the city at the intimation or desire of some parliament men, for the king's evidence, that receiving that money for that purpose from some of them he sent it to those persons for whom it was designed.

Bourn confesses, That sir Thomas Armstrong used to come every day to Ferguson when he lay at his house, that he has seen him since the discovery when Armstrong urged him to get some friends together to make a push and that it was better to die with swords in their hands.

Walcot confesses, That Aaron Smith was sent into Scotland by those gentlemen that transacted the matter.

Bourn says, That Ferguson lodged at his father's house a month or six weeks, that he left no papers in his house and used to say he would never be hanged for papers.

Shepard says, Bayly told him Charlton had undertaken to raise the whole 10,000*l.*

Romzey says, The lord Russel was about going away from Shepard's when he arrived there, and that his lordship said Trenchard was a coward, and that he would go down himself and begin the rising.

Charlton confesses, He had paid Oates 80*l.* per quarter for his subsistence, of which he had but 10*l.* of my lord Shaftsbury, and was himself the rest out of purse, but that he was told a parliament would reimburse him.

Shephard says, That Ferguson and Bayly told him that Charlton would procure the 10,000*l.* himself, and raise it upon a mortgage.

Charlton further says, He paid Oates about 400*l.* in all.

The INFORMATION of JOHN ROUSE, taken at his desire in Newgate the 19th of July, 1683.

The informant saith, That the design of the rebellion and seizing the king was begun by the earl of Shaftsbury at his house in Aldersgate-street, before the meeting of the parliament at Oxford, where the duke of Monmouth, sir Thomas Armstrong, lord Russel, lord Grey, major Manly a brewer at Whitechapel, and others whom he saw there and as he was told likewise by his servants, frequently met there; the foundation of all the scurrilous libels was laid, particularly that of the Raree-shew.

That all those clubs at Mile-end green, the Sun behind the Exchange, at Russel's in Iron-Monger-lane, and at the Salutation in Lombard-street were to carry on that design, he cannot recollect all names, but declares that he knows all those of note that were at those clubs were thoroughly acquainted with the design. These clubs were divided into three factions, by reason of which division the informant saith the design went on so slow as it did, and at last it fell between the duke of Monmouth, and a commonwealth; and the greater number carried it for the duke of Monmouth, because it was found upon his going into the West, Chichester and Cheshire, the vogue of the people went for him. Those that were for a commonwealth were absolutely resolved to have nothing to do with the race of the Stuarts; but they pitched upon Richard Cromwell, whom this informant knows to be in England. The longest day that was appointed for execution of this was at Midsummer-day last, when the people should be at Guild-hall choosing sheriffs.

Five hundred horse were promised to be sent in from the country, who were to seize the Guards.

The pretence of the conspirators was to secure his majesty from being killed by the papists, that if he would not comply with his parliament at Oxford, then to set up the d[...] of Monmouth. That this was long d[...] likewise before the meeting at Oxford.

"The informant saith, That it was resolved by the conspirators, that when they should have accomplished their design, and that the Tower and city of London was seized, then they were to go to Whitehall and demand their privileges, and freedoms, with their swords in their hands.

"He hath been present at many of these clubs where these designs have been consulted of, and all the persons of any note, Commons as well as Lords were consenting to the conspiracy; he saith he can prove it by many witnesses.

"He saith my lord Shaftsbury and Oates were the principal movers in all this business.

The story of this Plot, or rather perhaps of these Plots (for the alleged design of assassination seems to be sufficiently distinguishable from that of insurrection) like that of the Popish Plot (see vol. 6, p. 1401, of this Collection) has not escaped the imputation of fabrication. Burnet's account of these Plots is pretty circumstantial as follows:

"Thus affairs were going on all the year eighty-two, and to the beginning of eighty-three. The earl of Shaftsbury had been for making use of the heat the city was in during the contest about the sheriffs, and thought they might have created a great disturbance, and made themselves masters of the Tower: and he believed, the first appearance of the least disorder would have prevailed on the king to yield every thing. The duke of Monmouth, who understood what a rabble was and what troops were, looked on this as a mad exposing of themselves and of their friends. The lords Essex and Russel were of the same mind. So lord Shaftsbury, seeing they could not be engaged into action, flew out against them. He said, the duke of Monmouth was sent into the party by the king for this end, to keep all things quiet till the court had gained its point: He said, lord Essex had also made his bargain, and was to go to Ireland; and that among them lord Russel was deceived. With this he endeavoured to blast them in the city: they studied to prevent the ill effects that those jealousies which he was infusing into the citizens might have among them. So the duke of Monmouth gave an appointment to lord Shaftsbury or some of his friends to meet him, and some others that he should bring along with him, at Shepherd's, a wine merchant in whom they had an entire confidence. The night before this appointment lord Russel came to town on account of his uncle's illness. The duke of Monmouth went to him, and told him of the appointment, and desired he would go thither with him: He consented, the rather because he intended to taste some of that merchant's wine. At night they went with lord Grey and sir Thomas Armstrong. When they came, they found none there but Rumsey and Ferguson, two of lord Shaftsbury's tools that he employed: upon which, they seeing no better company resolved immediately to go back. But lord Russel called for a taste of the wines: and while they were bringing it him up, Rumsey and Armstrong fell into a discourse of surprising the Guards. Rumsey fancied it might have been easily done: Armstrong, that had commanded them, shewed him his mistakes. This was no consultation about what was to be done, but only about what might have been done. Lord Russel spoke nothing upon the subject: but as soon as he had tasted his wines they went away. It may seem, that this is too light a passage to be told so copiously: but much depends on it. Lord Shaftsbury had one meeting with the earls of Essex and Salisbury before he went out of England. Fear, anger, and disappointment, had wrought so much on him, that lord Essex told me he was much broken in his thoughts: his notions were wild and impracticable: and he was glad that he was gone out of England: but said, that he had done them already a great deal of mischief, and would have done more if he had staid. As soon as he was gone, the lords and all the chief men of the party saw their danger from forward sheriffs, willing juries, mercenary judges, and bold witnesses. So they resolved to go home, and be silent, to speak and to meddle as little as might be in public business, and to let the present ill-temper the nation was fallen into wear out: for they did not doubt but the court, especially as it was now managed by the duke, would soon bring the nation again into its wits by their ill conduct and proceedings. All that was to be done was, to keep up as much as they could a good spirit with relation to elections of parliament, if one should be called.

Monmouth and some others meet often together.

"The duke of Monmouth resolved to be advised chiefly by lord Essex. He would not be alone in that, but named lord Russel, against whom no objection could lie: and next to him he named Algernoon Sidney, brother to the earl of Leicester, a man of most extraordinary courage, a steady man, even to obstinacy, sincere, but of a rough and boisterous temper that could not bear contradiction. He seemed to be a Christian, but in a particular form of his own: he thought, it was to be like a divine philosophy in the mind: but he was against all public worship, and every thing that looked like a church. He was stiff to all republican principles; and such an enemy to every thing that looked like monarchy, that he set himself in a high opposition against Cromwell when he was made Protector. He had studied the history of government in all its branches beyond any man I ever knew. He was ambassador in Denmark at the time of the Restoration, but did not come back till the year seventy-eight, when the parliament was pressing the king into a war. The court of France obtained leave for him to return. He did all

he could to divert people from that war: so that some took him for a pensioner of France: but, to those to whom he durst speak freely he said, he knew it was all a juggle; that our court was in an entire confidence with France, and had no other design in this shew of a war but to raise an army, and keep it beyond sea till it was trained and modelled. Sidney had a particular way of insinuating himself into people that would hearken to his notions, and not contradict him. He tried me: but I was not so submissive a hearer: so we lived afterwards at a great distance. He wrought himself into lord Essex's confidence to such a degree, that he became the master of his spirit. He had a great kindness for lord Howard, as was formerly told: for that lord hated both the king and monarchy as much as he himself did. He prevailed on lord Essex to take lord Howard into their secrets, though lord Essex had expressed such an ill opinion of him a little before to me, as to say he wondered how any man would trust himself alone with him. Lord Russel, though his cousin german, had the same ill opinion of him. Yet Sidney overcame both their aversions. Lord Howard had made the duke of Monmouth enter into confidence with Sidney, who used to speak very slightly of him, and to say, it was all one to him whether James duke of York or James duke of Monmouth was to succeed. Yet lord Howard perhaps put a notion into him, which he offered often to me, that a prince who knew there was a flaw in his title would always govern well, and consider himself as at the mercy of the right heir if he was not in all things in the interests and hearts of his people, which was often neglected by princes that relied on an undoubted title. Lord Howard by a trick put both on the duke of Monmouth, and Sidney, brought them to be acquainted. He told Sidney that the duke of Monmouth was resolved to come some day alone and dine with him: and he made the duke of Monmouth believe that Sidney desired this, that so he might not seem to come and court the duke of Monmouth: and said that some regard was to be had to his temper and age. Hampden was also taken into their secret: he was the grandson of him that had pleaded the cause of England in the point of the ship-money with king Charles the First. His father was a very eminent man, and had been zealous in the exclusion: he was a young man of great parts; one of the learnedest gentlemen I have ever known; for he was a critic both in Latin, Greek, and Hebrew: he was a man of great heat and vivacity, but too unequal in his temper: he had once great principles of religion: but he was much corrupted by P. Simon's conversation at Paris.

They treat with some of the Scottish Nation.

"With these men the duke of Monmouth met often. His interest in Scotland, both by the dependance that his wife's great estate brought him, but chiefly by the knowledge he had of their affairs while he was among them, and by the confidence he knew they had all in him, made him turn his thoughts much towards that kingdom as the properest scene of action. He had met often with lord Argile while he was in London, and had many conferences with him of the state of that kingdom, and of what might be done there: and he thought the business of Carolina was a very proper blind to bring up some of the Scotch gentlemen under the appearance of treating about that. They upon this agreed to send one Aaron Smith to Scotland, to desire that some men of absolute confidence might be sent up for that end. So when the Proclamation that was formerly mentioned was published, it spread such an universal apprehension through all the suspected counties, that they looked on themselves as marked out to destruction: and it is very natural for the people under such impressions to set themselves to look out for remedies as soon as they can.

"In the beginning of April some of them came up. The person that was most entirely trusted, and to whom the journey proved fatal, was Baillie, of whose unjust treatment upon Carstairs's information an account was formerly given. He was my cousin german: so I knew him well. He was in the Presbyterian principles, but was a man of great piety and virtue, learned in the law, in mathematics, and in languages: I went to him, as soon as I heard he was come, in great simplicity of heart, thinking of nothing but of Carolina. I was only afraid they might go too much into the company of the English, and give true representations of the state of affairs in Scotland: this might be reported about by men that would name them: and that might bring them into trouble. But a few weeks after I found they came not to me as they were wont to do: and I heard they were often with lord Russel. I was apprehensive of this: and lord Essex being in the country, I went to him, to warn him of the danger I feared lord Russel might be brought into by this conversation with my countrymen. He diverted me from all my apprehensions; and told me, I might depend on it, lord Russel would be in nothing without acquainting him: and he seemed to agree entirely with me, that a rising in the state in which things were then would be fatal. I always said, that when the root of the constitution was struck at to be overturned, then I thought subjects might defend themselves: but I thought jealousies and fears, and particular acts of injustice, could not warrant this. He did agree with me in this: he thought, the obligation between prince and subject was so equally mutual, that upon a breach on the one side the other was free: but though he thought the late injustice in London, and the end that was driven at by it, did set them at liberty to look to themselves, yet he confessed things were not ripe enough yet, and that an ill laid and an ill managed rising would be our ruin. I was then newly come from writing my History of the Reformation; and did so evidently

see, that the struggle for lady Jane Grey, and Wyat's rising, was that which threw the nation so quickly into popery after king Edward's days, (for such as had rendered themselves obnoxious in those matters saw no other way to secure themselves, and found their turning was a sure one), that I was now very apprehensive of this; besides that I thought it was yet unlawful. What past between the Scots and the English lords I know not; only that lord Argyle, who was then in Holland, asked at first 20,000*l.* for buying a stock of arms and ammunition, which he afterwards brought down to 8,000*l.* and 1,000 horse to be sent into Scotland: upon which he undertook the conduct of that matter. I know no further than general hints of their matters: for though Hampden offered frequently to give me a particular account of it all, knowing that I was writing the history of that time, yet I told him, that till by an indemnity that whole matter was buried I would know none of those secrets, which I might be obliged to reveal, or to lie and deny my knowledge of them: so to avoid that I put it off at that time. And when I returned to England at the Revolution, we appointed often to meet, in order to a full relation of it all. But by several accidents it went off, as a thing is apt to do which one can recover at any time. And so his unhappy end came on before I had it from him. I know this, that no money was raised. But the thing had got some vent; for my own brother, a zealous Presbyterian, who was come from Scotland, it not being safe for him to live any longer in that kingdom knowing that he had conversed with many that had been in the rebellion, told me, there was certainly somewhat in agitation among them, about which some of their teachers had let out somewhat very freely to himself: how far that matter went, and how the scheme was laid, I cannot tell; and so must leave it in the dark. Their contract for the project of Carolina seemed to go on apace: they had sent some thither the former year, who were now come back, and brought them a particular account of every thing: they likewise, to cover their negociations with lord Argyle, sent some over to him; but with the blind of instructions for buying ships in Holland, and other things necessary for their transportation.

Other Conspirators meet at the same time on designs of assassinating the King.

"While this matter was thus in a close management among them, there was another company of lord Shaftsbury's creatures that met in the Temple in the chambers of one West, a witty and active man, full of talk, and believed to be a determined atheist. Rumsey and Ferguson came constantly thither. The former of these was an officer in Cromwell's army, who went into Portugal with the forces that served there under Schomberg. He did a brave action in that service: and Schomberg writ a particular letter to the king setting it out: upon which he got a place: and he had applied himself to lord Shaftsbury as his patron. He was much trusted by him, and sent often about on messages. Once or twice he came to lord Russel, but it was upon indifferent things. Lord Russel said to me, that at that very time he felt such a secret aversion to him, that he was in no danger of trusting him much. He was one of the bold talkers, and kept chiefly among lord Shaftsbury's creatures. He was upon all the secret of his going beyond sea; which seemed to shew, that he was not then a spy of the court's, which some suspected he was all along. Ferguson was a hot and a bold man, whose spirit was naturally turned to plotting: he was always unquiet, and setting people on to some mischief: I knew a private thing of him, by which it appeared he was a profligate knave and could cheat those that trusted him entirely: so though he, being a Scotish man, took all the ways he could to be admitted into some acquaintance with me, I would never see him, or speak with him: and I did not know his face till the revolution: he was cast out by the Presbyterians; and then went among the Independents, where his boldness raised him to some figure, though he was at bottom a very empty man: he had the management of a secret press, and of a purse that maintained it: and he gave about most of the pamphlets writ of that side: and with some he past for the author of them; and such was his vanity, because this made him more considerable, that he was not ill pleased to have that believed; though it only exposed him so much the more. With these Goodenough, who had been under-sheriffs of London in Bethel's year, and one Holloway of Bristol met often, and had a great deal of rambling discourse, to shew how easy a thing it was of the sudden to raise 4,000 men in the city. Goodenough by reason of his office knew the city well, and pretended he knew many men of so much credit in every corner of it, and on whom they might depend, as could raise that number, which he reckoned would quickly grow much stronger: and it is probable, this was the scheme with which lord Shaftsbury was so possessed, that he thought it might be depended on. They had many discourses of the heads of a declaration proper for such a rising, and disputed of these with much subtilty as they thought: and they intended to send Holloway to Bristol, to try what could be done there at the same time. But all this was only talk, and went no further than to a few of their own confidents. Rumsey, Ferguson, and West were often talking of the danger of executing this, and that the shorter and surer way was to kill the two brothers. One Rumbold, who had served in Cromwell's army, came twice among them; and while they were in that wicked discourse, which they expressed by the term lopping. He upon that told them, he had a farm near Hodsden in the way to New-Market: and there was a moat cast round his house, through which the king sometimes past in his way thither. He said,

the coach went through quite alone, without any of the guards about it; and that, if he had laid any thing cross the way to have stopt the coach but a minute, he could have shot them both, and have rode away through grounds that he knew so well that it should not have been possible to have followed him. Upon which they ran into much wicked talk about the way of executing that. But nothing was ever fixed on: all was but talk. At one time lord Howard was among them: and talked over their several schemes of lopping. One of them was to be executed in the play house. Lord Howard said, he liked that best, for then they would die in their calling. This was so like his way of talk, that it was easily believed, though he always denied it. Walcot, an Irish gentleman that had been of Cromwell's army, was now in London, and got into that company: and he was made believe, that the thing was so well laid that many both in city and country were engaged in it. He liked the project of a rising but declared he would not meddle in their lopping. So this wicked knot of men continued their caballings from the time that the earl of Shaftsbury went away: and these were the subjects of their discourses. The king went constantly to New-Market for about a month both in April and October In April while he was there a fire broke out, and burnt a part of the town: upon which the king came back a week sooner than he intended.

A Plot is discovered.

" While all these things were thus going on, there was one Keeling, an Anabaptist in London who was sinking in his business, and began to think that of a witness would be the better trade. Goodenough had employed him often to try their strength in the city, and to count on whom they could depend for a sudden rising: he had also talked to him of the design of killing the two brothers: so he went and discovered all he could to Leg, at that time made lord Dartmouth. Leg made no great account of it, but sent him to Jenkins. Jenkins took his depositions, but told him he could not proceed in it without more witnesses: so he went to his brother, who was a man of heat in his way, but of probity, who did not incline to ill designs, and less to discover them. Keeling carried his brother to Goodenough, and assured him he might be depended on. So Goodenough ran out into a rambling discourse of what they both could and would do: and he also spoke of killing the king and the duke, which would make their work easy. When they left him the discoverer pressed his brother to go along with him to Westminster, where he pretended business, but stopt at White-Hall. The other was uneasy, longing to get out of his company, to go to some friends for advice, upon what had happened. But he drew him on: and at last, he not knowing whither he was going, he drew him into Jenkins's office; and there told the secretary he had brought another witness, who had heard the substance of the plot from Goodenough's own mouth just then. His brother was deeply struck with this cheat and surprize, but could not avoid the making oath to Jenkins of all he had heard. The secretary, whose phlegmatic head was not turned for such a work, let them both go, and sent out no warrants, till he had communicated the matter to the rest of the ministry, the king being then at Windsor. So Keeling, who had been thus drawn into the snare by his brother, sent advertisements to Goodenough, and all the other persons whom he had named, to go out of the way.

A forged story laid by Rumsey and West.

" Rumsey and West were at this time perpetually together: and apprehending that they had trusted themselves to too many persons, who might discover them, they laid a story, in which they resolved to agree it so well together, that they should not contradict one another. They framed their story thus, that they had laid the design of their rising to be executed on the 17th November, the day of queen Elizabeth's coming to the crown, on which the citizens used to run together, and carry about popes in procession, and burn them: so that day seemed proper to cover their running together, till they met in a body. Others, they said, thought it best to do nothing on that day, the rout being usually at night, but to lay their rising for the next Sunday at the hour of people's being at church. This was laid to shew how near the matter was to the being executed. But the part of their story that was the best laid, (for this looked ridiculous, since they could not name any one person of any condition that was to head this rising,) was, that they pretended that Rumbold had offered them his house in the heath for executing the design. It was called Rye: and from thence this was called the Rye-plot, he asked forty men, well armed and mounted, whom Rumsey and Walcot were to command in two parties: the one was to engage the Guards, if they should be near the coach: and the other was to stop the coach, and to murder the king and the duke. Rumsey took the wicked part on himself, saying that Walcot had made a scruple of killing the king, but none of engaging the Guards: so Rumsey was to do the execution. And they said, they were divided in their minds what to do next: some were for defending the moat till night, and then to have gone off: others were for riding through grounds in a shorter way towards the Thames. Of these forty they could name but eight. But it was pretended that Walcot, Goodenough, and Rumbold had undertaken to find both the rest of the men, and the horses: for, though upon such an occasion men would have taken care to have had sure and well tried horses, this also was said to be trusted to others. As for arms, West had bought some, as on a commission for a plantation: and these were said to be some of the arms with which they were to be furnished; though when they were seen they seemed very improper for such a service. I

saw all West's narrative, which was put in lord Rochester's hands: and a friend of mine borrowed it of him, and lent it me. They were so wise at court that they would not suffer it to be printed; for then it would have appeared too gross to be believed.

"But the part of it all that seemed the most amazing was, that it was to have been executed on the day in which the king had intended to return from New-market, but the happy fire that sent him away a week sooner had quite defeated the whole plot, while it was within a week of its execution, and neither horses, men, nor arms yet provided. This seemed to be so eminent a providence, that the whole nation was struck with it: and both preachers and poets had a noble subject to enlarge on, and to shew how much the king and the duke were under the watchful care of providence.

"Within three days after Keeling's discovery the plot broke out, and became the whole discourse of the town. Many examinations were taken, and several persons were clapt up upon it. Among these Wildman was one, who had been an agitator in Cromwell's army, and had opposed his protectorship. After the restoration he being looked on as a high republican was kept long in prison; where he had studied law and physic so much, that he past as a man very knowing in those matters. He had a way of creating in others a great opinion of his sagacity, and had great credit with the duke of Buckingham, and was now very active under Sidney's conduct. He was seized on, and his house was searched: in his cellars there happened to be two small field-pieces that belonged to the duke of Buckingham, and that lay in York-house when that was sold and was to be pulled down: Wildman carried those two pieces, which were finely wrought, but of little use, into his cellars, where they were laid on ordinary wooden carriages, and no way fitted for any service: yet these were carried to White-hall, and exposed to view, as an undeniable proof of a rebellion designed, since here was their cannon.

"Several persons came to me from court, assuring me that there was full proof made of a plot. Lord Howard coming soon after them to see me talked of the whole matter in his spiteful way with so much scorn, that I really thought he knew of nothing, and by consequence I believed there was no truth in all these discoveries. He said, the court knew they were sure of juries, and they would furnish themselves quickly with witnesses. and he spoke of the duke as of one that would be worse, not only than queen Mary, but than Nero: and with eyes and hands lifted to heaven he vowed to me that he knew of no plot, and that he believed nothing of it.

"Two days after, a proclamation came out for seizing on some who could not be found: and among these Rumsey and West were named. The next day West delivered himself, and Rumsey came in a day after him. These two brought out their story, which, how incredible soever it was, past so for certain, that any man that seemed to doubt it was concluded to be in it. That of defending themselves within mud walls and a moat looked like the invention of a lawyer, who could not lay a military contrivance with any sort of probability. Nor did it appear where the forty horse were to be lodged, and how they were to be brought together. All these were thought objections that could be made by none but those who either were of it, or wished well to it. These new witnesses had also heard of the conferences that the duke of Monmouth and the other lords had with those who were from Scotland, but knew nothing of it themselves. Rumsey did likewise remember the discourse at Shepherd's.

Russel and some others were put in prison upon it.

"When the council found the duke of Monmouth and lord Russel were named, they writ to the king to come to London: they would not venture to go further without his presence and leave. A messenger of the council was sent the morning before the king came to wait at lord Russel's gate, to have stopt him if he had offered to go out. This was observed; for he walked many hours there: and it was looked on as done on purpose to frighten him away; for his back gate was not watched: so for several hours he might have gone away if he had intended it. He heard that Rumsey had named him: but he knew he had not trusted him, and he never reflected on the discourse at Shepherd's. He sent his wife among his friends for advice. They were of different minds: but since he said he apprehended nothing from any thing he had said to Rumsey, they thought his going out of the way would give the court too great an advantage, and would look like a confessing of guilt. So this agreeing with his own mind, he stayed at home till the king was come: and then a messenger was sent to carry him before the council. He received it very composedly, and went thither. Rumsey had also said, that at Shepherd's there was some discourse of Trenchard's undertaking to raise a body out of Taunton, and of his failing in it: so lord Russel was examined upon that, the king telling him, that nobody suspected him of any design against his person, but that he had good evidence of his being in designs against his government. Lord Russel protested, he had heard nothing relating to Trenchard: and said to the last, that either it was a fiction of Rumsey's, or it had past between him and Armstrong, while he was walking about the room, or tasting the wines at Shepherd's; for he had not heard a word of it. Upon all this he was sent a close prisoner to the Tower.

Sidney was brought next before the council. But his examination lasted not long. He said, he must make the best defence he could, if they had any proof against him: but he would not fortify their evidence by any thing he should say. And indeed that was the wisest course; for the answering questions upon such exami-

nations is a very dangerous thing: every word that is said is laid hold on, that can be turned against a man's self or his friends, and no regard is had to what he might say in favour of them: and it had been happy for the rest, especially for Baillie, if they had all held to this maxim. There was at that time no sort of evidence against Sidney, so that his commitment was against law. Trenchard was also examined: he denied every thing. But one point of his guilt was well known: he was the first man that had moved the exclusion in the house of commons so he was reckoned a lost man.

"Baillie and two other gentlemen of Scotland, both Campbells, had changed their lodgings while the town was in this fermentation: and upon that they were seized on as suspected persons, and brought before the king. He himself examined them, and first questioned them about the design against his person, which they very frankly answered, and denied they knew any thing about it. Then he asked them, if they had been in any consultations with lords or others in England in order to an insurrection in Scotland. Baillie faultered at this: for his conscience restrained him from lying. He said he did not know the importance of those questions, nor what use might be made of his answers: he desired to see them in writing, and then he would consider how to answer them. Both the king and the duke threatened him upon this: and he seemed to neglect that with so much of the air of a philosopher, that it provoked them out of measure against him. The other two were so lately come from Scotland, that they had seen nobody, and knew nothing. Baillie was loaded by a special direction with very heavy irons: so that for some weeks his life was a burden to him. Cochran, another of those who had been concerned in this treaty was complained of, as having talked very freely of the duke's government of Scotland. Upon which the Scotish secretary sent a note to him desiring him to come to him; for it was intended only to give him a reprimand, and to have ordered him to go to Scotland. But he knew his own secret: so he left his lodgings, and got beyond sea. This showed the court had not yet got full evidence: otherwise he would have been taken up, as well as others were.

Monmouth and others escaped.

"As soon as the council rose, the king went to the dutchess of Monmouth's, and seemed so much concerned for the duke of Monmouth, that he wept as he spoke to her. That duke told a strange passage relating to that visit to the lord Cutts, from whom I had it. The king told his lady, that some were to come and search her lodgings: but he had given order that no search should be made in her apartments: so she might conceal him safely in them. But the duke of Monmouth added, that he knew him too well to trust him: so he went out of his lodgings. And it seems he judged right: for the place that was first searched for him was her rooms: but he was gone. And he gave that for the reason why he could never trust the king after that. It is not likely the king meant to proceed to extremities with him, but that he intended to have him in his own hands, and in his power.

"An order was sent to bring up the lord Grey, which met him coming up. He was brought before the council, where he behaved himself with great presence of mind. He was sent to the Tower. But the gates were shut: so he staid in the messenger's hands all night, whom he furnished so liberally with wine, that he was dead drunk. Next morning he went with him to the Tower gate, the messenger being again fast asleep. He himself called at the Tower gate, to bring the lieutenant of the Tower to receive a prisoner. But he began to think he might be in danger: he found Rumsey was one witness: and if another should come in he was gone: so he called for a pair of oars, and went away, leaving the drunken messenger fast asleep. Warrants were sent for several other persons: some went out of the way, and others were dismissed after some months imprisonment. The king shewed some appearance of sincerity in examining the witnesses: he told them, he would not have a growing evidence: and so he charged them to tell out at once all that they knew: he led them into no accusations by asking them any questions: he only asked them, if Oates was in their secret: they answered, that they all looked on him as such a rogue, that they would not trust him. The king also said, he found lord Howard was not among them, and he believed that was upon the same account. There were many more persons named, and more particulars set down in West's narrative, than the court thought fit to make use of: for they had no appearance of truth in them.

"Lord Russel from the time of his imprisonment looked upon himself as a dead man, and turned his thoughts wholly to another world. He read much in the Scriptures, particularly in the Psalms, and read Baxter's Dying Thoughts. He was as serene and calm as if he had been in no danger at all. A committee of council came to examine him upon the design of seizing on the guards, and about his treating with the Scots. He answered them civilly; and said, that he was now preparing for his trial, where he did not doubt but he should answer every thing that could be objected to him. From him they went to Sidney, who treated them more roughly: he said, it seemed they wanted evidence, and therefore they were come to draw it from his own mouth; but they should have nothing from him. Upon this examination of lord Russel, in which his treating with the Scots was so positively charged on him, as a thing of which they were well assured, his lady desired me to see who this could be, that had so charged him: but this appeared to be only an artifice, to draw a confession from him. Cochran was gone: and Baillie

was a close prisoner, and was very ill used: none were admitted to him. I sent to the keeper of the prison to let him want for nothing, and that I should see him paid. I also at his desire sent him books for his entertainment, for which I was threatened with a prison. I said, I was his nearest kinsman in the place, and this was only to do as I would be done by. From what I found among the Scots I quieted the fears of lord Russel's friends.

"Lord Howard was still going about, and protesting to every person he saw that there was no plot, and that he knew of none: yet he seemed to be under a consternation all the while. Lord Russel told me, he was with him when the news was brought that West had delivered himself, upon which he saw him change colour: and he asked him, if he apprehended any thing from him? He confessed, he had been as free with him as with any man. Hamden saw him afterwards under great fears: and upon that he wished him to go out of the way, if he thought there was matter against him, and if he had not a strength of mind to suffer any thing that might happen to him. The king spoke of him with such contempt that it was not probable that he was all this while in correspondence with the Court.

Howard's Confession.

"At last, four days before lord Russel's trial, he was taken in his own house after a long search; and was found standing up within a chimney. As soon as he was taken he fell a crying: and at his first examination he told, as he said, all that he knew. West and Rumsey had resolved only to charge some of the lower sort; but had not laid every thing so well together, but that they were found contradicting one another. So Rumsey charged West for concealing some things: upon which he was laid in irons, and was threatened with being hanged: for three days he would eat nothing, and seemed resolved to starve himself: but nature overcame his resolutions: and then he told all he knew, and perhaps more than he knew; for I believe it was at this time that he wrote his narrative. And in that he told a new story of lord Howard, which was not very credible, that he thought the best way of killing the king and the duke, was for the duke of Monmouth to fall into New-Market with a body of three or 400 horse when they were all asleep, and so to take them all: as if it had been an easy matter to get such a body together, and to carry them thither invisibly upon so desperate a service. Upon lord Howard's examination, he told a long story of lord Shaftsbury's design of raising the city: he affirmed, that the duke of Monmouth had told him, how Trenchard had undertaken to bring a body of men from Taunton, but had failed in it: he confirmed that of a rising intended in the city on the 17th or the 19th of November last: but he knew of no body that was to be at the head of it. So this was looked on as only talk. But that which came more home was, that he owned there was a council of six settled, of which he himself was one; and that they had had several debates among them concerning an insurrection, and where it should begin, whether in the city or in the country; but that they resolved to be first well informed concerning the state Scotland was in; and that Sidney had sent Aaron Smith to Scotland, to bring him a sure information from thence, and that he gave him 60 guineas for his journey: more of that matter he did not know; for he had gone out of town to the Bath, and to his estate in the country. During his absence the lords began to apprehend their error in trus ing him: and upon it lord Essex said to lord Russel, as the last told me in prison, that the putting themselves in the power of such a man would be their reproach, as well as their ruin, for trusting a man of so ill a character: so they resolved to talk no more to him: but at his next coming to town they told him, they saw it was necessary at present to give over all consultations, and to be quiet: and after that they saw him very little. Hamden was upon lord Howard's discovery seized on: he, when examined, desired not to be pressed with questions: so he was sent to the Tower.

The Earl of Essex was sent to the Tower.

"A party of horse was sent to bring up lord Essex, who had staid all this while at his house in the country; and seemed so little apprehensive of danger, that his own lady did not imagine he had any concern on his mind. He was offered to be conveyed away very safely: but he would not stir. His tenderness for lord Russel was the cause of this: for he thought his going out of the way might incline the jury to believe the evidence the more for his absconding. He seemed resolved, as soon as he saw how that went, to take care of himself. When the party came to bring him up, he was at first in some disorder, yet he recovered himself. But when he came before the council, he was in much confusion. He was sent to the Tower: and there he fell under a great depression of spirit: he could not sleep at all. He had fallen before that twice under great fits of the spleen, which returned now upon him with more violence. He sent by a servant, whom he had long trusted, and who was suffered to come to him, a very melancholy message to his wife; that what he was charged with was true: he was sorry he had ruined her and her children: but he had sent for the earl of Clarendon, to talk freely to him, who had married his sister. She immediately sent back the servant, to beg of him that he would not think of her or her children, but only study to support his own spirits; and desired him to say nothing to lord Clarendon, nor to any body else, till she should come to him, which she was in hope to obtain leave to do in a day or two. Lord Clarendon came to him upon his message: but he turned the matter so well to him, as if he had been only

to explain somewhat that he had mistaken himself in when he was before the council: but as to that for which he was clapt up, he said there was nothing in it, and it would appear how innocent he was. So lord Clarendon went away in a great measure satisfied, as he himself told me. His lady had another message from him, that he was much calmer; especially when he found how she took his condition to heart, without seeming concerned for her own share in it. He ordered many things to be sent to him: and among other things he called at several times for a penknife, with which he used to pare his nails very nicely: so this was thought intended for an amusement. But it was not brought from his house in the country, though sent for. And when it did not come, he called for a razor, and said, that would do as well. The king and the duke came to the Tower that morning, as was given out, to see some invention about the ordnance. As they were going into their barge, the cry came after them of what had happened to lord Essex: for his man, thinking he staid longer than ordinary in his closet, said, he looked through the key hole, and there saw him lying dead: upon which the door being broke open, he was found dead; his throat cut, so that both the jugulars and the gullet were cut, a little above the *aspera arteria*. I shall afterwards give an account of the further enquiry into this matter, which past then universally as done by himself. The coroner's jury found it self-murder. And when his body was brought home to his own house, and the wound was examined by his own surgeon, he said to me, it was impossible the wound could be as it was, if given by any hand but his own: for except he had cast his head back, and stretched up his neck all he could, the *aspera arteria* must have been cut. But to go on with this tragical day, in which I lost the two best friends I had in the world:

The Lord Russel's Trial.

"The lord Russel's trial was fixed for that day. A jury was returned that consisted of citizens of London who were not freeholders. So the first point argued in law was, whether this could be a legal jury. The statute was express: and the reason was, that none but men of certain estates might try a man upon his life. It was answered, that the practice of the city was to the contrary, upon the very reason of the law: for the richest men of the city were often no freeholders, but merchants whose wealth lay in their trade and stock. So this was over-ruled, and the jury was sworn. They were pickt out with great care, being men of fair reputation in other respects, but so engaged in the party for the Court, that they were easy to believe any thing on that side. Rumsey, Shepherd, and lord Howard were the witnesses, who deposed according to what was formerly related. Shepherd swore, lord Russel was twice at his house, though he was never there but once. And when lord Russel sent him word after his sentence, that he forgave him all he had sworn against him, but that he must remember that he was never within his doors but one single time: to which all the answer Shepherd made was, that all the while he was in court during the trial he was under such a confusion, that he scarce knew what he said. Both Rumsey and he swore, that lord Russel had expressed his consent to the seizing on the guards, though they did not swear any one word that he spoke which imported it: so that here a man was convicted of treason, for being present by accident, or for some innocent purpose, where treasonable matter was discoursed, without bearing a part in that discourse, or giving any assent by words or otherwise to what was so discoursed; which at the most amounts to mispris.on, or concealment of treason only. As lord Howard began his evidence, the news of the earl of Essex's death came to the Court. Upon which lord Howard stopped, and said, he could not go on till he gave vent to his grief in some tears. He soon recovered himself, and told all his story. Lord Russel defended himself by many compurgators, who spoke very fully of his great worth, and it was not likely he would engage in ill designs. Some others besides myself testified, how solemnly lord Howard had denied his knowledge of any plot upon its first breaking out. Finch, the solicitor general, said, no regard was to be had to that, for all witnesses denied at first, It was answered, if these denials had been only to a magistrate, or at an examination, it might be thought of less moment: but such solemn denials, with asseverations, to friends, and officiously offered, shewed that such a witness was so bad a man, that no credit was due to his testimony. It was also urged, that it was not sworn by any of the witnesses, that lord Russel had spoken any such words, or words to that effect: and without some such indication, it could not be known that he hearkened to the discourse, or consented to it. Lord Russel also asked, upon what statute he was tried: if upon the old statute of the 25th of Edward the third, or if upon the statute made declaring what shall be held treason during the king's reign? They could not rely on the last, because of the limitation of time in it: six months, and something more, were passed since the time of these discourses: so they relied on the old statute. Upon which he asked, where was the overt-act? For none appeared. It was also said, that by that statute the very imagining the king's death, when proved by an overt act, was treason: but it was only the levying war, and not the imagining to levy war against the king, that was treason by that statute. Cook and Hale were of this opinion, and gave their reasons for it. And it seemed, that the parliament that past the act of treason during the present reign were of that mind for they enumerated consultations to raise war among those things which were declared to be treason during that reign: This

shewed, that they did not look on them as comprehended within the old statute. The king's counsel pretended, that consultations to seize on the king's guards were an overt-act of a design against the king's person. But those forces, that have got the designation of guards appropriated to them, are not the king's guards in law: They are not so much as allowed of by law: For even the lately dissolved long parliament, that was so careful of the king, and so kind to him, would never take notice of the king's forces, much less call them his guards. The guards were only a company of men in the king's pay: So that a design to seize on them amounted to no more, than to a design to seize on a part of the king's army. But the word guards sounded so like a security to the king's person, that the design against them was constructed a design against his life: And yet none of the witnesses spoke of any design against the king's person. Lord Howard swore positively, that they had no such design. Yet the one was constructed to be the natural consequence of the other. So that after all the declaiming against a constructive treason in the case of lord Strafford, the court was always running into it, when they had a mind to destroy any that stood in their way. Lord Russel desired, that his counsel might be heard to this point of seizing the guards: But that was denied, unless he would confess the fact: And he would not do that, because as the witnesses had sworn it, it was false. He once intended to have related the whole fact, just as it was: But his counsel advised him against it. Some of his friends were for it, who thought that it could amount to no more than a concealment and misprision of treason. Yet the counsel distinguished between a bare knowledge, and a concealing that, and a joining designedly in council with men that did design treason: For in that case, though a man should differ in opinion from a treasonable proposition, yet his mixing in council with such men will in law make him a traitor. Lord Russel spoke but little: Yet in few words he touched on all the material points of law that had been suggested to him. Finch summed up the evidence against him: But in that, and in several other trials afterwards, he shewed more of a vicious eloquence, in turning matters with some subtlety against the prisoners, than of solid or sincere reasoning. Jefferies would shew his zeal, and speak after him: But it was only an insolent declamation, such as all his were, full of fury and indecent invectives. Pemberton was the head of the court, the other bench not being yet filled. He summed up the evidence at first very fairly: But in conclusion he told the jury, that a design to seize the guards was surely a design against the king's life. But though he struck upon this, which was the main point, yet it was thought that his stating the whole matter with so little eagerness against lord Russel, was that which lost him his place: For he was turned out soon after. Lord Russel's behaviour during the trial was decent and composed: So that he seemed very little concerned in the issue of the matter He was a man of so much candour, that he spoke little as to the fact: For since he was advised not to tell the whole truth, he could not speak against that which he knew to be true, though in some particulars it had been carried beyond the truth. But he was not allowed to make the difference: So he left that wholly to the jury, who brought in their verdict against him, upon which he received sentence.

"He then composed himself to die with great seriousness. He said, he was sure the day of his trial was more uneasy to him, than that of his execution would be. All possible methods were used to have saved his life: money was offered to the lady Portsmouth, and to all that had credit, and that without measure. He was pressed to send petitions and submissions to the king, and to the duke: But he left it to his friends to consider how far these might go, and how they were to be worded. All he was brought to was, to offer to live beyond sea in any place that the king should name, and never to meddle any more in English affairs. But all was in vain: Both king and duke were fixed in their resolutions; but with this difference, as lord Rochester afterwards told me, that the duke suffered some, among whom he was one, to argue the point with him, but the king could not bear the discourse. Some have said, that the duke moved that he might be executed in Southampton square before his own house, but that the king rejected that as indecent. So Lincoln's-Inn Fields was the place appointed for his execution. The last week of his life he was shut up all the mornings, as he himself desired. And about noon I came to him, and staid with him till night. All the while he expressed a very christian temper, without sharpness or resentment, vanity or affectation. His whole behaviour looked like a triumph over death. Upon some occasions, as at table, or when his friends came to see him, he was decently cheerful. I was by him when the sheriffs came to shew him the warrant for his execution. He read it with indifference: And when they were gone he told me, it was not decent to be merry with such a matter, otherwise he was near telling Rich, (who though he was now of the other side, yet had been a member of the House of Commons, and had voted for the exclusion,) that they should never sit together in that house any more to vote for the bill of Exclusion. The day before his death he fell a bleeding at the nose: Upon that he said to me pleasantly, I shall not now let blood to divert this: That will be done to morrow. At night it rained hard: And he said, such a rain to-morrow will spoil a great shew, which was a dull thing in a rainy day. He said, the sins of his youth lay heavy upon his mind: But he hoped God had forgiven them, for he was sure he had forsaken them, and for many years he had walked before God with a sincere heart: If in his public actings he had committed errors, they were

only the errors of his understanding; for he had no private ends, nor ill designs of his own in them: He was still of opinion that the king was limited by law, and that when he broke through those limits his subjects might defend themselves, and restrain him: He thought a violent death was a very desirable way of ending one's life: It was only the being exposed to be a little gazed at, and to suffer the pain of one minute, which, he was confident, was not equal to the pain of drawing a tooth. He said, he felt none of those transports that some good people felt; but he had a full calm in his mind, no palpitation at heart, nor trembling at the thoughts of death. He was much concerned at the cloud that seemed to be now over his country: But he hoped his death should do more service, than his life could have done.

"This was the substance of the discourse between him and me. Tillotson was oft with him that last week. We thought the party had gone too quick in their consultations, and too far; and that resistance in the condition we were then in was not lawful. He said, he had not leisure to enter into discourses of politics; but he thought a government limited by law was only a name, if the subjects might not maintain those limitations by force: otherwise all was at the discretion of the prince: that was contrary to all the notions he had lived in of our government. But he said, there was nothing among them but the embrios of things, that were never like to have any effect, and that were now quite dissolved. He thought, it was necessary for him to leave a paper behind him at his death: and because he had not been accustomed to draw such papers, he desired me to give him a scheme of the heads fit to be spoken to, and of the order in which they should be laid: which I did. And he was three days employed for some time in the morning to write out his speech. He ordered four copies to be made of it, all which he signed; and gave the original with three of the copies to his lady, and kept the other to give to the sheriffs on the scaffold. He writ it with great care: and the passages that were tender he writ in papers apart, and shewed them to his lady, and to myself, before he writ them out fair. He was very easy when this was ended. He also writ a letter to the king, in which he asked pardon for every thing he had said or done contrary to his duty, protesting he was innocent as to all designs against his person or government, and that his heart was ever devoted to that which he thought was his true interest. He added, that though he thought he had met with hard measure, yet he forgave all concerned in it from the highest to the lowest; and ended, hoping that his majesty's displeasure at him would cease with his own life, and that no part of it should fall on his wife and children. The day before his death he received the sacrament from Tillotson with much devotion. And I preached two short sermons to him, which he heard with great affection. And we were shut up till towards the evening. Then he suffered his children that were very young, and some few of his friends to take leave of him; in which he maintained his constancy of temper, though he was a very fond father. He also parted with his lady with a composed silence; and, as soon as she was gone, he said to me, The bitterness of death is past: for he loved and esteemed her beyond expression, as she well deserved it in all respects. She had the command of herself so much, that at parting she gave him no disturbance. He went into his chamber about midnight: and I staid all night in the outward room. He went not to bed till about two in the morning: and was fast asleep at four, when according to his order we called him. He was quickly dressed, but would lose no time in shaving: for he said, he was not concerned in his good looks that day.

The Trial and Execution of Walcot and others.

"He was not ill pleased with the account he heard that morning of the manner of Walcot's death, who together with one Hone and Rowse had suffered the day before. These were condemned upon the evidence of the witnesses. Rumsey and West swore fully against Walcot: he had also writ a letter to the secretary offering to make discoveries, in which he said the plot was laid deep and wide. Walcot denied at his death the whole business of the Rye-Plot, and of his undertaking to fight the guards while others should kill the king. He said, West had often spoken of it to him in the phrase of *lopping;* and that he always said he would not meddle in it, and that he looked on it as an infamous thing, and as that which the duke of Monmouth would certainly revenge, though West assured him that duke had engaged under his hand to consent to it. This confession of Walcot's, as it shewed himself very guilty, so it made West appear so black, that the court made no more use of him. Hone, a poor tradesman in London, who it seems had some heat but scarce any sense in him, was drawn in by Keeling, and Lee, another witness, who was also brought in by Keeling to a very wild thing, of killing the king but sparing the duke, upon this conceit, that we would be in less danger in being under a professed papist than under the king. Hone had promised to serve in the execution of it, but neither knew when, where, nor how it was to be done: so, though he seemed fitter for a Bedlam than a trial, yet he was tried the day before the lord Russel, and suffered with the others the day before him. He confessed his own guilt; but said, these who witnessed against him had engaged him in that design, for which they now charged him: but he knew nothing of any other persons, besides himself and the two witnesses. The third was one Rowse, who had belonged to Player the chamberlain of London; against whom Lee and Keeling swore the same things. He was more affected with a sense of the heat and fury with which he had been acted, than

the others were: but he denied, that he was ever in any design against the king's life. He said, the witnesses had let fall many wicked things of that matter in discourse with him: so that he was resolved to discover them, and was only waiting till he could find out the bottom of their designs: but that now they had prevented him. He vindicated all his acquaintance from being any way concerned in the matter, or from approving such designs. These men dying as they did, was such a disgrace to the witnesses, that the court saw it was not fit to make any further use of them. Great use was made of the conjunction of these two plots, one for a rising, and another for an assassination. It was said, that the one was that which gave the heart and hope to the other black conspiracy: by which they were over all England blended together as a plot within a plot, which cast a great load on the whole party.

Russel's Execution.

"Lord Russel seemed to have some satisfaction to find that there was no truth in the whole contrivance of the Rye-Plot: so that he hoped, that infamy, which now blasted their party, would soon go off. He went into his chamber six or seven times in the morning, and prayed by himself, and then came out to Tillotson and me: he drank a little tea and some sherry. He wound up his watch; and said, now he had done with time, and was going to eternity. He asked what he should give the executioner: I told him ten guineas: he said, with a smile, it was a pretty thing to give a fee to have his head cut off. When the sheriffs called him about ten o'clock, lord Cavendish was waiting below to take leave of him. They embraced very tenderly. Lord Russel, after he had left him, upon a sudden thought came back to him, and pressed him earnestly to apply himself more to religion; and told him what great comfort and support he felt from it now in his extremity. Lord Cavendish had very generously offered to manage his escape, and to stay in prison for him while he should go away in his cloaths: but he would not hearken to the motion. The duke of Monmouth had also sent me word, to let him know, that, if he thought it could do him any service, he would come in, and run fortunes with him. He answered, it would be of no advantage to him to have his friends die with him. Tillotson and I went in the coach with him to the place of execution. Some of the croud that filled the streets wept, while others insulted: he was touched with the tenderness that the one gave him, but did not seem at all provoked by the other. He was singing psalms a great part of the way; and said, he hoped to sing better very soon. As he observed the great crouds of people all the way, he said to us, I hope I shall quickly see a much better assembly. When he came to the scaffold, he walked about it four or five times. Then he turned to the sheriffs, and delivered his paper. He protested, he had always been far from any designs against the king's life or government: he prayed God would preserve both, and the Protestant religion. He wished all Protestants might love one another, and not make way for popery by their animosities.

Russel's last Speech.

"The substance of the paper he gave them was, first a profession of his religion, and of his sincerity in it: that he was of the Church of England: but wished all would unite together against the common enemy: that churchmen would be less severe, and dissenters less scrupulous. He owned, he had a great zeal against popery, which he looked on as an idolatrous and bloody religion: but that, though he was at all times ready to venture his life for his religion or his country, yet that would never have carried him to a black or wicked design. No man ever had the impudence to move to him any thing with relation to the king's life: He prayed heartily for him, that in his person and government he might be happy, both in this world and in the next. He protested, that in the prosecution of the Popish plot he had gone on in the sincerity of his heart; and that he never knew of any practice with the witnesses. He owned, he had been earnest in the matter of the exclusion, as the best way in his opinion to secure both the king's life and the Protestant Religion: and to that he imputed his present sufferings; but he forgave all concerned in them; and charged his friends to think of no revenges. He thought his sentence was hard: upon which he gave an account of all that had past at Shepherd's. From the heats that were in choosing the sheriffs he concluded, that matter would end as it now did, and he was not much surprized to find it fall upon himself: he wished it might end in him: killing by forms of law was the worst sort of murder. He concluded with some very devout ejaculations. After he had delivered this paper he prayed by himself: then Tillotson prayed with him. after that he prayed again by himself: and then undressed himself, and laid his head on the block, without the least change of countenance: and it was cut off at two strokes.

"This was the end of that great and good man: on which I have perhaps enlarged too copiously: but the great esteem I had for him, and the share I had in this matter, will I hope excuse it. His speech was so soon printed, that it was selling about the streets an hour after his death: upon which the court was highly enflamed. So Tillotson and I were appointed to appear before the cabinet council. Tillotson had little to say, but only that lord Russel had shewed him his speech the day before he suffered; and that he spoke to him, what he thought was incumbent on him, upon some parts of it, but he was not disposed to alter it. I was longer before them. I saw they apprehended I had penned the speech. I told the

king, that at his lady's desire I writ down a very particular journal of every passage, great and small, that had happened during my attendance on him: I had just ended it, as I received my summons to attend his majesty: so, if he commanded me, I would read it to him: which upon his command I did. I saw they were all astonished at the many extraordinary things in it: the most important of them are set down in the former relation. The Lord Keeper asked me, If I intended to print that. said, it was only intended for his lady's private use. The Lord Keeper, seeing the king silent, added, you are not to think the king is pleased with this, because he says nothing. This was very mean. He then asked me, If I had not studied to dissuade the lord Russel from putting many things in his speech. I said, I had discharged my conscience to him very freely in every particular: but he was now gone: so it was impossible to know, if I should tell any thing of what had past between us, whether it was true or false: I desired therefore to be excused. The duke asked me, if he had said any thing to me in confession. I answered, that if he had said any thing to me in confidence, that was enough to restrain me from speaking of it. Only I offered to take my oath, that the speech was penned by himself, and not by me. The duke, upon all that past in this examination, expressed himself so highly offended at me, that it was concluded I would be ruined. Lord Halifax sent me word, that the duke looked on my reading the journal, as a studied thing, to make a panegyrick on lord Russel's memory. Many pamphlets were writ on that occasion: and I was heavily charged in them all, as the adviser, if not the author, of the speech. But I was advised by all my friends to write no answer but to bear the malice that was vented upon me with silence; which I resolved to do."

"The Scottish prisoners were ordered to be sent down to be tried in Scotland, This was sad news to them: for the boots there are a severe torture. Baillie had reason to expect the worst usage: he was carried to Newgate in the morning that lord Russel was tried, to see if he could be persuaded to be a witness against him. Every thing that could work on him was made use of, but all in vain: so they were resolved to use him severely.

Suspicions of Essex's being murdered.

"I passed slightly over the suspicions that were raised upon lord Essex's death, when I mentioned that matter. This winter the business was brought to a trial: a boy and a girl did report, that they heard great crying in his lodgings, and that they saw a bloody razor flung out at window, which was taken up by a woman that came out of the house where he was lodged. These children reported this confidently that very day, when they went to their several homes: they were both about 10 or 12 years old. The boy went backward and forward in his story, sometimes affirming it, and at other times denying it: but his father had an office in the Custom-House: so it was thought, he prevailed with him to deny it in open court. But the girl stood firmly to her story. The simplicity of the children, together with the ill opinion that was generally had of the court, inclined many to believe this. As soon as his lady heard of it, she ordered a strict enquiry to be made about it: and sent what she found to me, to whom she had trusted all the messages that had past between her lord and her while he was in the Tower. When I perused all, I thought there was not a colour to found any prosecution on; which she would have done with all possible zeal, if she had found any appearances of truth in the matter. Lord Essex had got into an odd set of some strange principles: and in particular he thought, a man was the master of his own life; and seemed to approve of what his wife's great grandfather, the earl of Northumberland, did, who shot himself in the Tower after he was arraigned. He had also very black fits of the spleen. But at that time one Braddon, whom I had known for some years for an honest but enthusiastical man, hearing of these stories, resolved to carry the matter as far as it would go: and he had picked up a great variety of little circumstances, all which laid together seemed to him so convincing, that he thought he was bound to prosecute the matter. I desired him to come no more near me, since he was so positive. He talked of the matter so publicly, that he was taken up for spreading false news to alienate people's hearts from the king. He was tried upon it. Both the children owned, that they had reported the matter as he had talked it; the boy saying then, that it was a lie. Braddon had desired the boy to set it all under his hand, though with that he charged him to write nothing but the truth. This was called a suborning: and he was fined for it 2,000*l.* But I go next to a trial of more importance.

Sidney's Trial.

"Howard was the only evidence against the prisoners of better rank; for they had no communication with the other witnesses. So other things were to be found out as supplements to support it. Sidney was next brought to his trial. A jury was returned, consisting for most part of very mean persons. Men's pulses were tried beforehand, to see how tractable they would be. One Parry, a violent man, guilty of several murders, was not only pardoned, but was now made a justice of peace, for his officious meddling and violence. He told one of the duke's servants, thinking that such a one was certainly of their party, that he had sent in a great many names of jurors, who were sure men: that person told me this himself. Sidney excepted to their not being freeholders. But Jefferies said, that had been over-ruled in lord Russel's case: and therefore he over-ruled it; and would not so much as suffer Sidney to read the statute. This was one of his bold strains. Lord Russel was tried at the Old-Bailey, where the jury consisted of Londoners: and there indeed

the contrary practice had prevailed, upon the reason before-mentioned; for the merchants are supposed to be rich: but this trial was in Middlesex, where the contrary practice had not prevailed; for in a county a man who is no freeholder is supposed to be poor. But Jefferies said on another occasion, why might not they make precedents to the succeeding times as well as those who had gone before them had made precedents for them? The witnesses of the other parts of the plot were now brought out again to make a shew; for they knew nothing of Sidney. Only they said, that they had heard of a council of six, and that he was one of them. Yet even in that they contradicted one another; Rumsey swearing that he had it from West, and West swearing that he had it from him; which was not observed till the trial came out. If it had been observed sooner, perhaps Jefferies would have ordered it to be struck out; as he did all that Sidney had objected upon the point of the jury, because they were not freeholders. Howard gave his evidence, with a preface that had become a pleader better than a witness. He observed the uniformity of truth, and that all the parts of his evidence and theirs met together as two tallies. After this a book was produced, which Sidney had been writing, and which was found in his closet, in answer to Filmer's book entitled Patriarcha; by which Filmer asserted the divine right of monarchy, upon the eldest son's succeeding to the authority of the father. It was a book of some name, but so poorly writ, that it was somewhat strange that Sidney bestowed so much pains in answering it. In this answer he had asserted, that princes had their power from the people with restrictions and limitations; and that they were liable to the justice of the people, if they abused their power to the prejudice of the subjects, and against established laws. This by an innuendo was said to be an evidence to prove, that he was in a plot against the king's life. And it was insisted on, that this ought to stand as a second witness. The earls of Clare, Anglesey, and some others with myself, deposed what lord Howard had said, denying there was any plot. Blake, a draper, deposed, that having asked him when he was to have his pardon, he answered, not till the drudgery of swearing was over. Howard had also gone to Sidney's house and had assured his servants that there was nothing against him, and had desired them to bring his goods to his own house. Sidney shewed, how improbable it was that Howard, who could not raise five men, and had not five shillings to pay them, should be taken into such consultations. As for the book it was not proved to be writ by him; for it was a judged case in capital matters, that a similitude of hands was not a legal proof, though it was in civil matters: that whatever was in those papers, they were his own private thoughts, and speculations of government never communicated to any: it was also evident, that the book had been writ some years ago: so that could not be pretended to be a proof of a late plot: the book was not finished, so it could not be known how it would end: A man writing against Atheism, who sets out the strength of it, if he does not finish his answer, could not be concluded an Atheist, because there was such a chapter in his book. Jefferies interrupted him often very rudely, probably to put him in a passion, to which he was subject: but he maintained his temper to admiration. Finch aggravated the matter of the book, as a proof of his intentions, pretending it was an overt-act; for he said, 'scribere est agere.' Jefferies delivered it as law, and said, that all the judges were of the same mind, that if there were two witnesses, the one to the treason, the other only to a circumstance, such as the buying a knife, these made the two witnesses, which the statute required in cases of treason. In conclusion, Sidney was cast. And some days after he was brought to court to receive sentence. He then went over his objections to the evidence against him, in which judge Withins interrupted him, and by a strange indecency gave him the lie in open court. But he bore it patiently. He sent to lord Halifax, who was his nephew by marriage, a paper to be laid before the king, containing the main points of his defence, upon which he appealed to the king, and desired he would review the whole matter. Jefferies upon that in his furious way said, either Sidney must die, or he must die. His execution was respited for three weeks, the trial being universally cried out on, as a piece of most enormous injustice. When he saw the warrant of his execution, he expressed no concern at it. And the change that was now in his temper amazed all that went to him. He told the sheriffs that brought it, he would not expostulate upon any thing on his own account; (for the world was now nothing to him;) but he desired they would consider how guilty they were of his blood, who had not returned a fair jury but one packed, and as they were directed by the king's solicitor: he spoke this to them, not for his own sake, but for their sake. One of the sheriffs was struck with this, and wept. He told it to a person, from whom Tillotson had it, who told it me. Sidney wrote a long vindication of himself, (which I read,) and summed up the substance of it in a paper that he gave the sheriffs: but suspecting they might suppress it, he gave a copy of it to a friend. It was a fortnight before it was printed, though we had all the speeches of those who died for the popish plot printed the very next day. But, when it was understood that written copies of Sidney's Speech were going about, it was also printed. In it he shewed his innocence; that lord Howard was a infamous person, and that no credit was due to him: yet he did not deny the matter he swore against him. As for his book, he shewed what reason all princes had to abhor Filmer's maxims: for if primogeniture from Noah was the ground settled by God for monarchy, then all the princes now in the world were usurpers: none claiming by that pedigree, and this primogeniture being only in one person. He said, since God did not now by any

declaration of his will, as of old by prophets, mark out such or such persons for princes, they could have no title, but what was founded on law and compact: and this was that in which the difference lay between lawful princes and usurpers if possession was a donation from God, (which Filmer had substituted to the conceit of primogeniture), then every prosperous usurper had a good right. He concluded with a prayer, that the nation might be preserved from idolatry and tyranny. And he said, he rejoiced that he suffered for the old cause, in which he was so early engaged. These last words furnished much matter to the scribblers of that time. In his imprisonment he sent for some independent preachers, and expressed to them a deep remorse for his past sins and great confidence in the mercies of God. And indeed he met death with an unconcernedness, that became one who had set up Marcus Brutus for his pattern He was but a very few minutes on the scaffold at Tower-Hill: he spoke little, and prayed very short: and his head was cut off at one blow."

Mr. Fox, in the Introductory Chapter to his History of the Reign of James the Second writes thus of these transactions:

"Of the Rye-house plot it may be said muchmore truly than of the Popish,* that there was in it some truth, mixed with much falsehood; and though many of the circumstances in Keeling's account are nearly as absurd and ridiculous as those in Oates's, it seems probable that there was among some of those accused, a notion of assassinating the king; but whether this notion was ever ripened into what may be called a design, and, much more, whether it were ever evinced by such an overt-act as the law requires for conviction, is very doubtful. In regard to the conspirators of higher ranks, from whom all suspicion of participation in the intended assassination has been long since done away, there is unquestionably reason to believe that they had often met and consulted, as well for the purpose of ascertaining the means they actually possessed as for that of devising others, for delivering their country from the dreadful servitude into which it had fallen; and thus far their conduct appears clearly to have been laudable. If they went further, and did any thing which could be fairly construed into an actual conspiracy, to levy war against the king, they acted, considering the disposition of the nation at that period, very indiscreetly. But whether their proceedings had ever gone this length, is far from certain. Monmouth's communications with the king, when we reflect upon all the circumstances of those communications, deserve not the smallest attention; nor indeed, if they did, does the letter which he afterwards withdrew, prove any thing upon this point. And it is an outrage to common sense to call lord Grey's narrative, written as he himself states in his letter to James the Second, while the question of his pardon was pending, an authentic account. That which is most certain in this affair is, that they had committed no overt act, indicating the imagining the king's death, even according to the most strained construction of the statute of Edward the Third; much less was any such act legally proved against them. And the conspiring to levy war was not treason, except by a recent statute of Charles the Second, the prosecutions upon which were expressly limited to a certain time, which in these cases had elapsed; so that it is impossible not to assent to the opinion of those who have ever stigmatized the condemnation and execution of Russel as a most flagrant violation of law and justice.

"The proceedings in Sidney's case were still more detestable. The production of papers, containing speculative opinions upon government and liberty, written long before, and perhaps never even intended to be published, together with the use made of those papers, in considering them as a substitute for the second witness to the overt act, exhibited such a compound of wickedness and nonsense as is hardly to be paralleled in the history of juridical tyranny. But the validity of pretences was little attended to, at that time, in the case of a person whom the court had devoted to destruction, and upon evidence such as has been stated, was this great and excellent man condemned to die. Pardon was not to be expected. Mr. Hume says, that such an interference on the part of the king, though it might have been an act of heroic generosity could not be regarded as an indispensable duty. He might have said, with more propriety that it was idle to expect that the government, after having incurred so much guilt in order to obtain the sentence, should, by remitting it, relinquish the object, just when it was within its grasp. The same historian considers the jury as highly blameable, and so do I; but what was their guilt, in comparison of that of the court who tried, and of the government who prosecuted, in this infamous cause? Yet the jury, being the only party that can with any colour be stated as acting independently of the government, is the only one mentioned by him as blameable. The prosecutor is wholly omitted in his censure, and so is the court; this last, not from any tenderness for the judge, (who, to do this author justice, is no favourite with him, (but lest the odious connection between that branch of the judicature and the government should strike the reader too forcibly; for Jefferies, in this instance, ought to be regarded as the mere tool and instrument, (a fit one, no doubt,) of the prince who had appointed him for the purpose of this and similar services. Lastly, the king is gravely introduced on the question of pardon, as if he had had no prior concern in the cause, and were now to decide upon the propriety of extending mercy to a criminal condemned by a court of judicature; nor are we once reminded what

* See vol. 6, of this Collection, p. 1403, 1405.

that judicature was, by whom appointed, by whom influenced, by whom called upon, to receive that detestable evidence, the very recollection of which, even at this distance of time, fires every honest heart with indignation. As well might we palliate the murders of Tiberius, who seldom put to death his victims without a previous decree of his senate. The moral of all this seems to be, that whenever a prince can, by intimidation, corruption, illegal evidence, or other such means, obtain a verdict against a subject whom he dislikes, he may cause him to be executed without any breach of indispensable duty; nay, that it is an act of heroic generosity, if he spares him. I never reflect on Mr. Hume's statement of this matter but with the deepest regret. Widely as I differ from him upon many other occasions, this appears to me to be the most reprehensible passage of his whole work. A spirit of adulation towards deceased princes, though in a good measure free from the imputation of interested meanness, which is justly attached to flattery, when applied to living monarchs; yet, as it is less intelligible, with respect to its motives, than the other, so is it in its consequences, still more pernicious to the general interests of mankind. Fear of censure from contemporaries will seldom have much effect upon men in situations of unlimited authority: they will too often flatter themselves, that the same power which enables them to commit the crime, will secure them from reproach. The dread of posthumous infamy, therefore, being the only restraint, their consciences excepted, upon the passions of such persons, it is lamentable that this last defence, (feeble enough at best,) should in any degree be impaired; and impaired it must be, if not totally destroyed, when tyrants can hope to find in a man like Hume, no less eminent for the integrity and benevolence of his heart, than for the depth and soundness of his understanding, an apologist for even their foulest murders.

"Thus fell Russel and Sidney, two names that will, it is hoped, be for ever dear to every English heart. When their memory shall cease to be an object of respect and veneration, it requires no spirit of prophecy to foretell that English liberty will be fast approaching to its final consummation. Their deportment was such as might be expected from men who knew themselves to be suffering, not for their crimes, but for their virtues. In courage they were equal, but the fortitude of Russel, who was connected with the world by private and domestic ties, which Sidney had not, was put to the severer trial; and the story of the last days of this excellent man's life, fills the mind with such a mixture of tenderness and admiration, that I know not any scene in history that more powerfully excites our sympathy, or goes more directly to the heart."

295. The Trial of Captain THOMAS WALCOT,* at the Old Bailey, for High Treason: 35 CHARLES II. A. D. 1683.

THURSDAY, July 12, 1683, at the Sessions-House in the Old-Bailey, London: The court being met, and proclamation made for attendance, the proceedings were as follow:

Thomas Walcot being set to the bar, and after having held up his hand, the Indictment was read as follows:

"London. The Jurors for our sovereign lord the king, upon their oaths, present, That Thomas Walcot, late of London, gentleman, as a false traitor against the most illustrious and excellent prince, our sovereign lord Charles 2, by the grace of God, of England, Scotland, France and Ireland king, his natural lord, not having the fear of God in his heart; nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil; and the true duty, and natural obedience, which true and faithful subjects of our sovereign lord the king, towards him our said lord the king, do bear, and of right ought to bear, wholly withdrawing; and with his whole strength intending the peace and common tranquillity of this kingdom of England to disturb, and war and rebellion against our said lord the king to move and stir up, and the government of our said lord the king within this kingdom of England to subvert, and our said lord the king from his title, honour and kingly name of the imperial crown of this his kingdom of England to put down and deprive, and our said lord the king to death and final destruction to bring and put, the 2d day of March, in the year of the reign of our sovereign lord Charles 2, king of England, &c. the five-and-thirtieth, and divers other days and times, as well before as after, at the parish of St. Michael Bassishaw, in the ward of Bassishaw, London, aforesaid, maliciously and traiterously, with divers other traitors, to the jurors aforesaid unknown, did conspire, compass, imagine and intend our said lord the king, his supreme lord, not only of his kingly state, title, power, and government of this his kingdom of England to deprive and throw down, but also our said lord the king to kill and to death to bring and put, and the

* See the preceding Introduction. The Proceedings in Scotland against Rumbald, A. D. 1685, are connected with these Trials. A brief account of those proceedings is given by Fountainhall, which, together with any more particular report which may be obtained, shall be inserted in its chronological place. See, too, the duke of Monmouth's Case in that same year, and the Case next immediately succeeding this of Walcot.

ancient government of this his kingdom of England to change, alter, and wholly to subvert; and a miserable slaughter amongst the subjects of our said lord the king, through his whole kingdom of England, to cause and procure, and insurrection and rebellion against our said lord the king to move, and stir up, within this kingdom of England: And to fulfil and perfect the said most horrible treasons, and traiterous compassings, imaginations and purposes aforesaid, the said Thomas Walcot as a false traitor, then and there, and divers other days and times, as well before as after, maliciously, traiterously and advisedly did assemble, meet together, and consult with the aforesaid other traitors, to the jurors aforesaid unknown, and with them did treat of and for the executing and perfecting their treasons, compassings, imaginations and purposes aforesaid; and that the said Thomas Walcot as a false traitor, maliciously, traiterously, and advisedly, then and there, and divers other days and times, as well before as after, did take upon himself, and to the aforesaid other traitors did promise to be aiding and assisting in the execution of the treasons, and traiterous compassings, imaginations and purposes aforesaid; and in providing armour and armed men, to fulfil and perfect the said treasons and traiterous compassings, imaginations and purposes aforesaid. And the said most wicked treasons, and traiterous compassings, imaginations and purposes aforesaid to fulfil and bring to pass, he the said Thomas Walcot as a false traitor, maliciously, traiterously and advisedly, then and there did procure and prepare arms, to wit, blunderbusses, carbines, and pistols, against the duty of his allegiance, against the peace of our sovereign lord the king, his crown and dignity, and against the form of the statutes in that case made and provided, &c."

Cl. of Cr. What sayest thou, Thomas Walcot? Art thou guilty of this High Treason, whereof thou standest indicted, or Not Guilty?

Capt. *Walcot.* Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Capt. *Walcot.* By God and my country.

Cl. of Cr. God send thee a good deliverance.

Then were William Hone, John Rouse, and William Blague arraigned, who pleaded Not Guilty to their indictments; and the court adjourned till the afternoon. When Thomas Walcot being again brought to the bar, after some exceptions, the following jury was impannelled: viz. Nicolas Charlton, Christ. Pitts, Robert Beddingfield, John Pelling, William Windbury, Thomas Seaton, William Rutland, Thomas Short, Theophilus Man, John Genew, John Short, Thomas Nicholas.

Cryer. O yes, If any one can inform my lords the king's justices, &c.

L. C. J. (Sir Francis Pemberton) Mr. Sheriffs, This is an extraordinary case; it is reasonable the evidence should be well heard: I require you both to keep the court quiet. Mr. Tanner, swear the king's evidence one at a time.

Clerk. Thomas Walcot, Hold up thy hand, You of the jury, look upon the prisoner, and harken to his charge: He stands indicted by the name of Thomas Walcot, gent. *prout* in the Indictment before, *mutatis mutandis.* Upon this indictment he hath been arraigned, and thereunto pleaded Not Guilty, and for his trial put himself upon his country; which country you are. Your charge is to inquire, &c.

Mr. *North.* May it please your lordship, and you that are sworn, the prisoner stands charged, That he being a false traitor to the king, and intending to raise war and rebellion against the king, and to bring his majesty to an untimely death, did on the 2nd of March, in the 35th year of the king, at the parish of St. Michael Bassishaw, meet with other traitors like himself, and there conspired to bring these treasons to effect; and accordingly promised to be aiding and assisting to provide arms for it; and did actually provide several arms, as carbines, blunderbusses, and pistols, for the perpetrating this treason. This is the charge, to which he says he is Not Guilty. We will call our witnesses and prove it, and then you are to find it.

Att. Gen. (Sir Robert Sawyer.) Gentlemen of the jury, the prisoner at the bar is accused of the highest of crimes, High Treason against his sovereign lord, in compassing the murder of the king, in raising rebellion within this kingdom, to the overthrowing of the best constituted, and the most excellent government in the world. Gentlemen, he does not stand alone; and therefore he is charged in the indictment with a conspiracy with many others; I am heartily sorry to say there are many. Indeed there is hardly any kingdom or nation, wherein there are not discontented persons, whose narrow fortunes, or malevolent spirits, render them uneasy in that condition God Almighty hath put them; but to find men that pretend to be Christians, or to have any thing of virtue, and under the best of governments, that indeed is a matter of wonder; and indeed it casts so great a stain and reproach upon the Protestant name, that it is not to be wiped off, but by the severest justice of the kingdom. Gentlemen, this design was for a general rising, and at the same time to assassinate the king and the duke of York: This is the design which the whole course of our evidence will open to you, and lies so naked, that I hope no Englishman that lives, but will see through these men, that have made such a noise and tumult in these latter days. This design to assassinate the king, and the rising, was designed to be in October last, upon the king's return from Newmarket; and at that time there was a noble lord, that is gone now to his own place,* as will appear by the evidence, that furnished them with considerable sums of money, for the providing men and arms for the assassinating the king at that time; but the assassinates were not then ready, as God appointed they should not be ready; and so at

that time they were disappointed. Then the general rising was put off till queen Elizabeth's day, which will open your eyes to see upon what grounds the tumultuous meetings were encouraged in the city, to the terror of all honest men: But that rising was also disappointed because some of the conspirators were not ready with their men in the country. And then, gentlemen, though it was pressed on by the person I mentioned, he then thought it high time to leave these confederates to themselves. Gentlemen, after this we shall trace them in their several meetings and consultations: for there was a time, that they struggled with themselves, which should be effected first, whether they should first kill the king and the duke; or whether they should first rise, and prosecute him in an open rebellion, and destroy him that way. And the course of our evidence will shew, how ingenious these men were; for it appears there were men of great ingenuity and courage, as appears by the prisoner at the bar; and they would discourse of these matters in phrases, that common persons should not understand them.

Capt. *Walcot.* I do not understand you.

Att. Gen. I speak as loud as I can. At their meetings, for cutting off the king, that 'was the executing of a bargain and sale;' and 'a short conveyance,' to come to their end. The raising of a war, that was under the notion, and so to be discoursed of, of 'executing a lease and release, to work both upon the possession and upon the reversion:' and under these mystical terms they discoursed of all these subjects, when they were in public places.

Capt. *Walcot.* I do not hear.

Att. Gen. You will hear the witnesses, and that will concern you more. Then, gentlemen, in these several meetings they contrived to allot every man in his part; some were to provide arms, others were to provide men to do the execution, which was last resolved upon to be at the Rye, upon the king's last return from Newmarket. Gentlemen, in all these parts, which I hope to prove, the prisoner will appear to have a principal part in them all: in all the consultations and advisings for the raising men, wherein he was to be a principal commander, according to the skill he hath; but for the assassination at the Rye, Rumbold was to conduct the men hired for that purpose. Gentlemen, accordingly the time was appointed for his majesty to come, and the assassinates to meet him there: but it pleased God, that that was disappointed by a miraculous fire; for so all Englishmen may call it: and whereas they were to go down on Friday to Rumbold's house, and the king to come up on Saturday, the fire brought him to town on Tuesday: but notwithstanding this great providence to divert them, Rumbold and others of the confederates resolved to go on with it still; and several places were appointed, and several officers were appointed to view those places, either between Hampton-Court and Windsor, or else to do it at the Play-houses, or upon the King's passage from the Play-house, by Bedford-wall at Covent-Garden; but if these should fail, they were resolved to do it at the Bull-feast. Gentlemen, they went further; they provided arms; which very arms opportunely fell into our hands: we seized those very arms that were bought for that purpose to kill the king and the duke. We shall go through with it; I will name you the material places of their meetings, that so you may understand the witnesses; the Green Dragon tavern on Snow-hill, the Salutation tavern in Lombard-street, the Angel tavern near the Exchange, and Mr. West's chamber in the Middle-Temple; these were some of the principal places, though they had several other places, wherein all these matters were consulted and transacted. They had prepared a new model of government, and they were for overturning all, as all these politicians do; though they had a most excellent government, yet they had a better in their own brains; or, at least, their share would be greater in it, as all rebels have a prospect of. Gentlemen, for the other parts, we shall have less occasion to give evidence of now; for every one had their particular part; some for the great design of the rising, some for the killing of the king, whereof that gentleman, the prisoner, was one; and there were other parts assigned to others, for taking and surprising the Tower. We will call our witnesses, and prove all that we have opened, and make it as clear to you as the Sun shines: such a prodigious villainy nothing but a firebrand from hell could kindle in men's minds, to kill the best of kings, and to destroy the best frame of government. Gentlemen, I do not question your justice, but that this man shall pay what is due to the justice of the kingdom.

Serj. *Jefferies.* My lord, I only desire to give an account of the method of our evidence.

Capt. *Walcot.* My lord, I desire I may have the favour of pen and ink.

L. C. J. That you shall have.

Serj. *Jefferies.* My lord, and you, gentlemen of the jury, Mr. Attorney hath already given you an account of the design that was to be put in execution by a parcel of evil men, whereof the prisoner at the bar we charge to be one. We shall not detain you longer with opening the matter, but beg the favour of the Court, that we may acquaint you a little with the method we intend to follow in calling our evidence for the king against the prisoner at the bar. In the first place, my lord, we will call our witnesses, to give your lordship and the jury satisfaction, that there was a design in general, and that that design was first intended to be a general rising over all the kingdom; in which design the prisoner at the bar had a very considerable share; and was looked upon to be a very proper and fit person for the managery of that part of the design: for other meetings, and at what places, Mr. Attorney hath already opened to you. We will then come to more particular agreements that were

between them, in order to the carrying on this admirable good work, as it hath been truly stated, for the destruction of the best and most merciful of kings, and for the destruction of the best of religions, the religion of the Church of England. I take notice of it, because all men may know, the most of these persons, nay all of them, concerned in this hellish conspiracy, were dissenters from the Church of England.

And the better to effect this horrid villainy, (I am sure I want words, and so does any man else, to express the baseness of these crimes, the better to effect this thing) the way it was to be done, was by taking off the king, and by taking off his brother too. At length after several debates, and some proposals made between these persons, they came to a determination, and an actual resolution, to take off the king, and his royal brother. My lord, we will prove generally, that this was the intent of the design, or the Plot in general. My lord, we will then give you an account, that they entered into several consultations for a new model and frame of government; for they intended to set up the people, and they had even fixed a certain superiority, and resolved, as all people of their principles have a mind, according to their several inclinations, to fix the power in the people; gentlemen, an old tenet, that brought the king's father to that untimely and horrid end, by fixing the power in the people. These gentlemen had a mind to insinuate and engage the people, by fixing the power in them, and saying, that public proclamations were to be made. And after this horrid and barbarous murder intended upon the king and the duke, there were declarations to be made in the names of such and such lords, and the associating members of the last House of Commons; these were the persons thought fit, in whose hands the power of the whole kingdom should be lodged. Gentlemen, after we have given you an account of the several meetings, then we will come to the prisoner at the bar, and prove against him, that he had not only an hand in the first part of the plot, about the rising, but he was also to be one of those villains that were to murder the king: I cannot express myself in more moderate terms, and I am sure no man can blame me that hears the proof. Gentlemen, when we have thus given you this evidence, I hope we shall satisfy the Court, and all mankind, that persons that have been thus guilty, under pretence of religion, or under any other pretence whatsoever, are fit objects of the severity of human laws. If we prove against the prisoner at the bar, that he had an hand in this horrid conspiracy, I make no doubt but you will shew yourselves to be Englishmen, loyal men, and overtake all men that thirst after the king's blood.

Solicitor General. (Mr. Finch.) Gentlemen, we will call our witnesses; and as no man can doubt, but the murder of the king, that vile design, would have been seconded by a power to back that horrid villainy; so we shall shew you, that this gentleman was concerned in both parts, in the immediate assassination of the king, and the raising of arms. We need not go about to give you an history of the thing any other way than in applying it to this person, for there is no part of this conspiracy he can clear himself from, and all the evidence that speak of this design, speak of this man as a chief actor in it.

Att. Gen. Call col. Rumsey. [Who was sworn.]

Sol. Gen. Col. Rumsey, Pray, give my lord and the jury an account of what you know of the prisoner at the bar, whether he were concerned, either in relation to the murder of the king, or the raising arms.

L. C. J. Mr. Rumsey, raise your voice so audibly, that you may be heard.

Col. *Rumsey.* The first meeting I had with this gentleman was at Mr. West's chamber.

Att. Gen. Before you begin to tell of your meeting, give an account of any rising that you heard of.

Col. *Rumsey.* Sir, about the latter end of October, or the beginning of November, I was with my lord Shaftesbury late at night, and he told me, That the duke of Monmouth, my lord Russel, my lord Grey, and sir Thomas Armstrong, were at one Mr. Shepherd's house, near Lombard-street. He desired me to go to know what they had done about the raising arms at Taunton. I did go, and Mr. Shepherd carried me up to them, and they told me, That Mr. Trenchard had failed them about the men, and they could proceed no further at that time.

L. C. J. What Shepherd was this?

Rumsey. Mr. Shepherd, the merchant, near Lombard-street, one Mr. Thomas Shepherd. And so I came to my lord the next day, and told him of it; and then he made his preparation to be gone for Holland.

L. C. J. What discourse had you with my lord Shaftesbury thereupon? What did he say? What made you believe he made preparation to be gone?

Rumsey. My lord, he said there was no dependence upon those gentlemen that met, and he would leave England. After that, a fortnight or three weeks, there was a meeting one day at Mr. West's chamber, and there was Mr. West, and Mr. Goodenough, and Mr. Wade, and somebody else there was, but I cannot remember his name. Captain Walcot was in Holland then. There it was proposed nothing was to be done by a general rising; but there was no surer way than to take off the king and the duke; and that to that intent and purpose they could not carry it on without Mr. Ferguson; and so he was writ for into Holland; and he came out of Holland upon that letter, and captain Walcot with him. After Mr. Ferguson's coming back from Holland, there was very suddenly a meeting again, and then it was concluded, that nothing was to be effected without taking off the king and the duke, or to that purpose. Mr. Ferguson was

not at that meeting. There were two or three meetings before captain Walcot was there, to find out men, and they could not find out a number of men, without which Mr. Rumbold would not undertake it. So, about three or four meetings after, captain Walcot came and he was resolved at last to join in the matter; but he would not have any hand in attacking the coach, but he would command a party that should charge the guards.

L. C. J. What did he say?

Rumsey. He would not meddle with the king in the coach, but he would command a party that should charge the guards that came along with him.

Att. Gen. After what manner was it settled that it should be done?

Rumsey. There were several parties; one small party was to have killed the postilion, another to kill the horses, and Mr. Rumbold with a certain number to seize the coach, and capt. Walcot the guards.

Att. Gen. Where was it to be done?

Rumsey. At Mr. Rumbold's house.

L. C. J. Where is that?

Rumsey. Near Hodsdon.*

L. C. J. For what purpose was Mr. Rumbold and those other men to attack the coach?

Rumsey. To murder the king and the duke.

L. C. J. How was it designed to be done, by pistol, or how?

Rumsey. By blunderbusses, and if they missed, then swords.

Att. Gen. Did they give any directions about preparing arms?

Rumsey. When that time failed, after the fire fell out at Newmarket———

L. C. J. When was this to be done?

Rumsey. When the king returned from Newmarket.

L. C. J. About what time?

Rumsey. The Saturday before Easter.

L. C. J. I don't ask you the day; but was it when the king was last at Newmarket, or before?

Rumsey. Last at Newmarket.

L. C. J. When he was last at Newmarket, in his return from thence?

Rumsey. In his return from thence.

L. C. J. Whereabouts?

Rumsey. At Rumbold's house, which is near Hodsdon.

L. C. J. In Hertfordshire?

Rumsey. In Hertfordshire.

L. C. J. And you say, those methods were chalked out by them, that Rumbold and some others were to attack the coach, others to kill the postilion, others to kill the horses; and this gentleman, with a commanded party, was to fall upon the guards? You say this?

Rumsey. Yes, my lord.

Capt. *Walcot.* I would beg leave, my lord—

L. C. J. Stay, Captain Walcot, you shall have leave to ask him any thing by and-by; but you must first let the king's counsel have done with him.

Att. Gen. I would ask you what you know of a design at any other time?

Rumsey. I do know nothing, I heard by Mr. West, but I knew nothing before.

L. C. J. About what time was this resolution taken up, as near as you can? I ask neither the day nor the week, but about what month?

Rumsey. The beginning of it was in February.

L. C. J. Last February?

Rumsey. Last February. Mr. Ferguson, and captain Walcot, came to this town upon Ash-Wednesday.

Serj. *Jefferies.* What other meetings were you at, Sir?

Rumsey. This was the first, when the prisoner at the bar came in. The first time was

* Of this House is given at the end of Sprat's History what is called "a particular account of the situation of the Rye House," as follows:

"The Rye-House in Hertfordshire, about eighteen miles from London, is so called from the Rye a meadow near it. Just under it there is a by-road from Bishop's-Strafford to Hoddesden, which was constantly used by the king when he went to or from Newmarket; the great road winding much about on the right-hand by Stansted. The house is an old strong building and stands alone, encompassed with a mote, and towards the garden has high walls, so that, twenty men might easily defend it for some time against five hundred. From a high tower in the house all that go or come may be seen both ways for near a mile's distance. As you come from Newmarket towards London, when you are near the house, you pass the meadow over a narrow cause-way, at the end of which is a toll-gate, which having entered you go through a yard, and a little field, and at the end of that through another gate you pass into a narrow lane, where two coaches at that time could not go a-breast. This narrow passage had on the left hand a thick hedge and a ditch, on the right a long range of building used for corn-chambers and stables with several doors and windows looking into the road, and before it a pale, which then made the passage so narrow, but is since removed. When you are past this long building, you go by the mote and the garden wall, that is very strong, and has divers holes in it through which a great many men might shoot. Along by the mote and wall the road continues to the Ware-river which runs about twenty or thirty yards from the mote, and is to be past by a bridge. A small distance from thence another bridge is to be past over the New-river. In both which passes a few men may oppose great numbers. In the outer court-yard, which is behind the long building, a considerable body of horse and foot might be drawn up unperceived from the road; whence they might easily issue out at the same time into each end of the narrow lane, which was also to be stopt up by overturning a cart."

at Mr. West's chamber, where he came: there it was considered and debated.

Serj. *Jefferies.* Very well, you say that was the first time capt. Walcot came in?

Rumsey. It was at Mr. West's chamber: this was before the king came from Newmarket that they were to do this, and the number of men could not be got ready; so there were several meetings afterward at Mr. West's chamber, to consult whether they could raise the number they resolved upon, and there were notes brought by Mr. Goodenough, and Mr. Rumbold, of many names, I cannot say who else brought notes of the men's names, to see that they might not be deceived in the number; and that time captain Walcot was there, and did undertake to go to Mr. Rumbold's house; and I think did go down to the very place.

L. C. J. Look you, Sir, Was there any number of men insisted upon for doing this villainy?

Rumsey. Capt. Rumbold did insist upon 50 men.

L. C. J. But capt. Walcot, How many was he to have?

Rumsey. It was not divided to a perfect number.

Serj. *Jefferies.* What other meetings were you at with captain Walcot?

Rumsey. I was at the Salutation with him, and the Green Dragon with him.

Serj. *Jefferies.* Where is that?

Rumsey. The Green-Dragon on Snow-hill.

Serj. *Jefferies.* Where is the Salutation?

Rumsey. In Lombard-street.

Serj. *Jefferies.* Now tell what discourses you had there?

Rumsey. That was about dividing the city into 20 parts, to see how many men could be raised out of every part, and they were to be divided into fifteenths, and every man to lead a fifteenth, that they might not be at a loss.

Att. Gen. Who was intrusted with this to do it?

Rumsey. Mr. Goodenough, Mr. West, and Mr. Wade.

Att. Gen. What account did they give of what they had done?

Rumsey. Mr. Goodenough gave an account of 7 parts of the 20, and said out of them would be raised 2,500 men, and made an estimate, that the other 13 would not raise above as many more; for those were the most considerable parts, as Wapping and Southwark.

Serj. *Jefferies.* Mr. Rumsey, pray what consultation had you afterward, and what was done after?

L. C. J. Pray let us go on a little gradatim. What was the reason, that this was not effected when the king returned from Newmarket?

Rumsey. The fire happened, and brought the king sooner from Newmarket than the men could be got ready.

L. C. J. Was there a day appointed for the doing this? Had you a prospect when the king would return?

Rumsey. Yes, it was commonly talked that it would be the Saturday before Easter, but he came on the Tuesday before.

L. C. J. Then give us an account how that design was disappointed at that time.

Rumsey. The fire happened in Newmarket, and they were all in confusion, and could not get their men ready by Tuesday; the news came upon Friday to town.

L. C. J. Of the fire?

Rumsey. Of the fire, and there was a meeting. Mr. Ferguson lodged then in Covent-Garden, and sent to several to come to him, to see if men could be got together against Tuesday, when the king was to come in; and it could not be done, and it was laid aside for that time.

Att. Gen. Upon that, what resolution was taken?

Rumsey. Then they had a meeting, and Ferguson was not there, there was capt. Walcot, Mr. West, and Mr. Goodenough; this was immediately after this disappointment: I am not certain whether it was in Mr. West's chamber; and that there might no accident happen afterwards to hinder it, it was resolved, that money should be raised for the buying of arms; and Mr. Ferguson undertook to raise money to buy arms, and Mr. West did undertake to provide them.

Att. Gen. Who undertook to provide men?

Rumsey. Mr. Goodenough and Mr. Rumbold.

L. C. J. Look you, colonel Rumsey, after this disappointment, when this next meeting was, had you any further design upon the king then?—*Rumsey.* Yes, my lord.

L. C. J. Give us some account of that.

Rumsey. It was to be done a coming from Windsor to London, or from Windsor to Hampton-Court, or the Play-house; and therefore that arms should be ready against any opportunity that should happen, let it be what it would: and Mr. West did undertake to provide arms, and he told me he bought them, and did not get his money in six or seven weeks after. A day or two after, going to Ferguson, he told him now he might have his money, if he would send a note to major Wildman; but after, he was told, that major Wildman would not pay it by note, but he must send Mr. Rumbold to him for it; for he would trust nobody else but him. And so Mr. West did send Mr. Rumbold, and he was there at his house by six o'clock in the morning, but he was gone out of town an hour before; so Mr. West went to Mr. Ferguson, and he then told him, that he should have money in two or three days, if he would come to him; and Mr. West did go to him, and he paid him 100*l.*

Att. Gen. Was there any provision made for a rising now again?

Rumsey. Yes, this general rising, by this division of the city, was intended to be ready against the first opportunity that happened.

Att. Gen. Before this discovery, did you keep up these meetings?

Sol. Gen. When was your last time?

Rumsey. My lord, I think it was the very Thursday before the discovery; but then on Friday or Saturday we had inklings that this was discovered, and did meet at the George upon Ludgate-hill.

L. C. J. Who met then?

Rumsey. I think it was the very Thursday before; I am not very certain; we met at the Salutation in Lombard-street, and there was captain Walcot, Mr. West, Mr. Wade, the two Goodenoughs, and Mr. Nelthrop, and myself.

Att. Gen. What did it come to, pray, what was your discourse then and resolution?

Rumsey. The resolution was still to carry it on. We went thither to know of Mr. Goodenough what was done about the other thirteen parts; he told us he had no account, but he said, he thought he should have a meeting on Saturday in the afternoon at Ludgate-hill, at the George, to have his answer; but the discovery coming, there did only meet Mr. Norton, Mr. Bourne;—there was another, I don't know who the other was; there was a fourth.

Att. Gen. Mr. Rumsey, pray, after the discovery, what did you resolve upon? What meetings had you upon your flight?

Rumsey. We met at captain Tracy's.

Att. Gen. What day was that?

Rumsey. That was upon the Monday after the discovery.

Serj. *Jeff.* Who was there?

Rumsey. There was captain Walcot, Mr. West, Mr. Wade, Mr. Nelthrop, the two Goodenoughs, and Mr. Ferguson.

Att. Gen. What did you discourse of there?

Rumsey. There was exclaiming against Mr. Keeling, and taking resolutions to be gone.

L. C. J. Mr. Keeling! What was Keeling?

Rumsey. Mr. Keeling was he that made the discovery.

Serj. *Jeff.* Have you ever been in Keeling's company?

Rumsey. I was that time we met at the Salutation; he came in there for a quarter of an hour.

L. C. J. Look you, Sir, do you know capt. Walcot? Are you sure it is that gentleman at the bar?—*Rumsey.* Yes, my lord.

L. C. J. Hath he owned always the name of Walcot?—*Rumsey.* Yes, my lord.

L. C. J. What did he say to Mr. Keeling, when he came to the Salutation?

Rumsey. There was in that very day's Gazette a report of the rising at Cologne, and one Gulick that headed them; and said Mr. West to Keeling, he should be our Gulick.

Att. Gen. Pray, how did he interpret it at that time?

Rumsey. Mr. West said, that Gulick was Keeling, Gu was Keel, and lick was ing.

Serj. *Jeff.* A quirk upon his name.

Att. Gen. When you resolved to fly, had you any discourse of making a stand, and fighting the government then?

Rumsey. Not that I know of, I was not all the time with them.

L. C. J. Look you, colonel Rumsey, let me ask you this: What was Keeling to do? Was there any post assigned to Keeling in this?—*Rumsey.* I never saw him before.

L. C. J. How long was it before the discovery that you did see him?

Rumsey. The Thursday before.

L. C. J. At the Salutation tavern?

Rumsey. Yes: he was there called Gulick.

Serj. *Jeff.* If captain Walcot will ask him any questions, he may.

L. C. J. Look you, Mr. Walcot, now you may ask col. Rumsey; tell me what questions you would have asked, and I will ask him.

Capt. *Walcot.* I desire colonel Rumsey may be asked, Whether I ever met at Mr. West's chamber, till after his majesty's return from Newmarket?

L. C. J. Look you, Sir, you hear the question; it is, Whether ever Mr. Walcot met with Mr. West, till after the king's return from Newmarket?—*Rumsey.* Till after?

L. C. J. Till after the king's return.

Rumsey. Yes, Sir.

Capt. *Walcot.* My lord, I have sufficient evidence against that.

Serj. *Jeff.* I think that he was to undertake the Guards; that was before the king came from Newmarket.

L. C. J. He hath given this evidence, He was there, and he would not attack the coach; he would not meddle with the king, but he would fall upon the Guards.

Capt. *Walcot.* Shall I speak a word, my lord?

L. C. J. Look you, I will tell you, you shall have your answers to these things; you have pen, ink, and paper.

Capt. *Walcot.* But I have a bad memory, and I am afraid I shall forget this very thing.

Serj. *Jeff.* I hope the jury will not forget it.

L. C. J. Look you, Mr. Walcot, we must not admit you to break in upon the king's evidence. When that is heard, you shall have your liberty to make your answer to any thing, and call any witness.

Rumsey. My lord, I will give one instance more: there was one meeting at the Five Bells in the Strand, where there was only Ferguson, captain Rumbold, Mr. West, Goodenough, and myself: and Mr. Ferguson told us that night, that captain Walcot would come the next meeting we had at Mr. West's chamber.

L. C. J. Then captain Walcot was not with you at the Five Bells?

Rumsey. Mr. Ferguson told us he would come in the next time at Mr. West's chamber, and there he did come.

L. C. J. And that was before the king went to Newmarket. Pray, Sir, answer this, Was this before the king went to Newmarket, or not?

Rumsey. No, my lord, this was when he was at Newmarket; for the king was at Newmarket when he and Mr. Ferguson came from Holland, the king was then at Newmarket.

Serj. *Jeff.* Now we will call Mr. Keeling. (Who was sworn.)

Att. Gen. Pray, will you acquaint my lord, and the jury, what you know of these conspiracies touching this man.

Keeling. Some time, my lord, before the king went to Newmarket, I was at the Sun-Tavern, and in company with Richard Rumbold, Richard Goodenough, and some others. Goodenough calls me forth of the room, and asked me, what men I could procure? I asked him, for what purpose? He said, to go down towards Newmarket. I asked, for what end? He said, To kill the king, and the duke of York. I told him, I thought none. Before the king came from Newmarket he renewed his question to me again several times: I had in the interim some discourse with Burton and Thompson. Burton told me, That Barber would be concerned; and he also told me, Thompson would. The Saturday after the fire happened at Newmarket, Rumbold came down to my house on the Friday, the day that the news was of the fire, the day that he commonly came to town, he came to my house; it was on the Friday, to see those men I could procure, and he desired to see them on the morrow, which was the Saturday before the king returned. The Saturday after the fire I went into London, and met Mr. Rumbold that day at the Exchange, and he then put me in mind of the matter again. I did go to Burton and Thompson, and Barber; the place appointed on Saturday was the Mitre-Tavern, at the corner of Duke-place, within Aldgate. He did meet there, where there was some discourse happened tending to that matter by Rumbold; the substance of which was, Whether they were willing to go down? I think he called the place by the name of The Rye, that is his house; there being, says he, no greater conveniency than in that, I believe scarce in England, for the executing such a design, being an house very intire to itself, and very remote from neighbours, besides the advantage that belongs to it of a court or wall. And, among other discourse, this was an argument to prevail with those persons: for, saith he, it will be a keeping one of the commandments, to kill the king and the duke of York; for, says he, if that be not done, there will be otherwise a great deal of bloodshed committed. He also told us the way that he designed to effect this at his house; That he had a conveniency for our horses; and that there would be so many to shoot at the postilion and the horses; and there would be so many appointed at the coach, and so many men to attack the guards; and if there was a failure in shooting the coach-horses, that then there should be men in the habit of country-men, with a cart in the lane, and they should run this cart athwart the lane, and so stop the coach. I believe there might be some other particulars, which, at present, I do not remember. From thence we went to the Exchange, and there we met in the afternoon at the Dolphin-Tavern in Bartholomew-lane; there was Rumbold, West, Goodenough, and Hone the joiner. And after we had been there a little, West asked Rumbold, Whether he heard the king would come home that night? He said, Yes, he heard, so; but said West, I believe he won't come till Monday, and I hope he won't come till Saturday; for that was the day appointed to go down to the Rye, to meet the king and the duke of York: said Rumbold, I hope they will not come till then: But, said West, if they do come, How many swan-quills must you have? How many goose-quills? And how many crow-quills, with sand and ink, must you have? Said they, six swan-quills, twenty goose-quills, and twenty or thirty crow-quills.

L. C. J. Explain that.

Keeling. I am coming to it. I asked West or Rumbold, or both of them, what they intended by it? They told me swan-quills were blunderbusses, goose-quills, muskets, and crow-quills were pistols, sand and ink, powder and bullet. This is all, my lord, as I remember in general as to the design.

L. C. J. What can you say concerning the prisoner at the bar?

Keeling. I was at the Salutation-Tavern, and captain Walcot was there; and when I came in, there was some person called me Culing, and I a little stranged at it, not knowing the meaning. Says I, gentlemen, What do you design by it? Says one, here's a good health to our English Culing. Says West, Culing in Dutch is Keeling in English. And says Mr. West, I hope to see Mr. Keeling at the head of as good an army in Wapping, as Culing is at Collen. I suppose captain Walcot remembers it very well. I can say no more, Sir, to the prisoner at the bar; I remember not to have seen him any other time upon this design.

Serj *Jeff.* Would the prisoner at the bar ask him any questions?

Capt. *Walcot.* My lord, I don't remember any such thing. If you please, my lord, to ask him, whether I call'd him Culing, or said any thing more or less to him.

Keeling. I don't say you did, but you were by, that I say.

Serj. *Jeff.* I think, Mr. Keeling, you were the person that made the discovery; give an account of it for the satisfaction of the world.

L. C. J. Upon what occasion did you reveal this?

Keeling. If your lordship please, I will give you an account. There was something happened before that time. Some time before this thing was discovered, Goodenough came down to my house, and I went with him to drink a dish of coffee, and there was in company with him Richard Rumbold, and his brother William, that I believe Mr. Walcot knows; and when we were by ourselves, he pulls out some papers out of his pocket, and gave me one. I asked him what he meant. He told me he had divided the city and suburbs into twenty parts, and there were three divisions: and, says he, you know the persons better than I, and who you can trust with it. One is yourself, and I

would have you take to your assistance nine or ten men, more or less, that you may communicate it safely to; and they were to go to several persons, and ask them, Supposing that the Papists should rise, or that there should be a general insurrection, or a French invasion, are you in a posture of defence? This was all we were to communicate of the matter to them, and this was to feel them, and see how many men they could raise. And he told me there was a design to kill the king, and the duke, which was designed to be done at the bull-feast: for Mr. West had told me it was to be done between Windsor and Hampton-Court. I asked him, if that design went on; and he said no; for the duke of York seldom came with the king from Windsor to Hampton-Court, but it was to be at the bull-feast. And says he, these men are to be in readiness, and it is designed, that the thing should be laid upon the Papists as a branch of the Popish-plot. He also told me there was one drawing a declaration which would relieve poor people of that which seemed most burdensome to them, which was the chimney-money: and then the common people would fall in with them more readily.

Att. Gen. How came you to discover it?

Keeling. I will tell you, Sir: I was troubled in my mind about it, and do declare that was the only reason. I thought I did very ill in not discovering it, and I had no peace, nor satisfaction, nor content, nor did I mind my business, nor could I take the rest that at other times I did, and that was the moving cause, and no other. I thought, if it were a sin in David to cut off the hem of Saul's garment, it was a sin in me much more to kill my king.

L. C. J. Was there any post in this case assigned to you? Was it required of you to do any thing yourself more than to raise those men, and know whether they were in readiness? Were you designed to go down to Rumbold's house? Tell what part you were to act.

Keeling. In the first place, I was to raise some men; but I thought they looked upon me for one to go down myself with some men I raised; but I remember not that I was asked the question.

L. C. J. Were any of those men to go down?

Keeling. Those three I named were to go down, Burton, Thompson, and Barber.

Att. Gen. Call Mr. Bourn.

L. C. J. Tell us the manner of your revealing and discovering this, who you discovered it to?

Keeling. I revealed it to one Mr. Peckham.

L. C. J. Who did he bring you to?

Keeling. To my lord Dartmouth.

L. C. J. And so you did discover the whole business to him?

Keeling. I had offered to discover it to another man before, but I thought he was careless; so I did not tell him positively what I thought to tell him, because I saw he slighted the matter. He was a minister of the Church of England. Then I went to Mr. Peckham, knowing he was intimate at court, and from thence to my lord Dartmouth, and then I was carried to Mr. Secretary Jenkins.

Att. Gen. Was there no design to take off the mayor or the sheriffs in particular?

Keeling. I will tell you: Goodenough did tell me, That the design was to secure the lord mayor, and the sheriffs; and he told me, they had a design to secure the Tower.

Att. Gen. Were you employed to arrest my lord mayor?

Keeling. I did arrest my lord mayor.

L. C. J. What are you? How come you to arrest my lord mayor? What are you by profession?

Keeling. A white salter, or oil-man.

L. C. J. How came you to arrest my lord mayor?

Keeling. I was put upon it by Goodenough and those men.

L. C. J. As a special bailiff?

Att. Gen. He was a special bailiff.

Keeling. Under the coroner?

Serj. *Jeff.* A special bailiff under a special coroner.

Mr. Baron *Street.* Was this coroner at any time of your meetings?

Keeling. No, my lord.

Mr. Baron *Street.* I am glad he was not.

L. C. J. What say you, capt. Walcot?

Capt. *Walcot.* My lord, I have nothing to say.

Sol. Gen. Call Zachary Bourn.

[Who was sworn.

Att. Gen. Pray will you recollect yourself, and tell what knowledge you have of the prisoner, what meetings you had, and what was agreed?

L. C. J. Raise your voice a little.

Bourn. The occasion of my knowing capt. Walcot, was Mr. Ferguson's lodging at my house. Capt Walcot used to come thither, but it was some time before I changed any words with him.

Att. Gen. Speak aloud, Mr. Bourn.

Bourn. Mr. Wade came presently after I came to town from the Wells, and said I must needs meet in such a place, it was at the Dragon upon Snow-hill, where we met several others besides capt. Walcot: the business was a design to raise men, and divide the city into 20 divisions, in order to the securing of his majesty, and the duke of York, and setting up the duke of Monmouth.

L. C. J. Was it securing, or killing?

Bourn. It was not killing, I think; we never expressed it killing at those meetings. I think, every time I met them, capt. Walcot was there. Once I was at the Salutation in Lombard-street.

L. C. J. What was the result of your meetings?

Bourn. To make all expedition imaginable.

L. C. J. Was it discoursed how, or in what manner, those persons were to be raised?

Don't refer yourself to the evidence that went before, but tell it yourself.

Bourn. The city was to be divided into 20 divisions, and to raise as many men as they could out of them; but they were not to tell the direct business, but if there should be occasion, or the papists should rise, they might know their strength, and what they were a to do.

Att. Gen. This was their pretence, because it should not be told those men.

L. C. J. Did Mr. Goodenough bring any account of it?

Bourn. Mr. Goodenough brought an account of about four thousand; three, I think it was, or very near, out of those divisions he had an account of.

L. C. J. Was capt. Walcot there at that time?—*Bourn.* Yes.

Serj. *Jeff.* When the discourse was about securing the king, and the duke, was captain Walcot there?—*Bourn.* Yes.

L. C. J. Did you hear what parties were designed to be in this act?

Bourn. They were not come to that.

L. C. J. Did you break off from them before that?

Bourn. No, the discovery prevented it.

L. C. J. When was your first meeting? About what time?

Bourn. About ten days before the discovery was made.

L. C. J. Was Mr. West at any of your consults?

Bourn. Yes, at some of them, and captain Walcot was at three of them, if not at all, I think.

L. C. J. What was to be done?

Bourn. They were to have seized my lord mayor, and the two sheriffs, and some of the aldermen, and the chief ministers of state about town.

Baron *Street.* Was there any body designed for that particular business?

Bourn. No, not then, it was not come to that.

Att. Gen. Was there any thing about my Lord Keeper?

Bourn. Yes, Mr. West did say to me, it should be my business to secure my Lord keeper, I told him, I did not care to meddle with any of my neighbours. He said he would call him to account with all his heart, he would put him in mind of Colledge.

Att. Gen. Pray were you employed to speak with any of the non-conformist ministers about it?

Bourn. I would have spoke to two of them, and Mr. West was unwilling; for he said, the ministers had destroyed all designs, ever since Constantine's time, and he would have nothing to do with them now.

Att. Gen. When was your last meeting, before the discovery that you were at?

Bourn. The Saturday before the discovery we met at captain Tracy's, and that evening we had some intimation that there was a discovery made. And I went again on Monday morning.

Att. Gen. Who was there?

Bourn. Captain Walcot, Mr. Ferguson, Mr. Goodenough, Mr. West, Mr. Norton, and myself; one captain Pottle came in, but he did not stay.

Att. Gen. Colonel Rumsey was there too, was not he?—*Bourn.* Yes, Sir.

L. C. J. And what did you resolve upon then?

Bourn. Truly they resolved upon nothing; I left them upon the debate of killing Mr. Keeling.

Att. Gen. Why would they kill him? Was that debated among them?

Bourn. Yes; because he made the discovery.

Att. Gen. Did you hear them talk of standing to it with swords in their hands?

Bourn. Yes, rather than be hanged, they thought that was the better way, and to have Keeling dispatched out of the world.

L. C. J. Look you, Sir, did any of them talk of securing themselves?

Bourn. The next morning I went again, and they were all gone but Mr. West, they had all secured themselves.

L. C. J. Was the prisoner at the bar there at that time, when they consulted about killing Mr. Keeling? Was he there at that meeting on Monday morning?

Bourn. He was there at captain Tracy's; he was there, I think, all the while, while I was there; for I was not there all the time.

L. C. J. (To Walcot.) Now, Sir, what question would you have?

Capt *Walcot.* My lord, if you please, I would ask whether he ever heard me say any thing, more or less, of assassinating the king?

L. C. J. In the first place, did you hear any thing in general of assassinating the king?

Bourn. I did hear of it, my lord, when the thing was over. And as to his question, I did never hear him discourse of that matter. I understood the design was prevented.

L. C. J. Who did you understand that from?

Bourn. From one Mr. Row, and Mr. Ferguson.

Att. Gen. Pray, in all your meetings, was there no discourse of killing the king and the duke?—*Bourn.* Very little.

Serj. *Jeff.* The discourse was about securing the king, while Walcot was there?

Bourn. There was such discourse in several meetings. It was said, it would be well if they were off, and the discourse was about lopping.

Att. Gen. Pray tell my lord, what discourse you had of lopping, and the general point.

Bourn. They said, there was no way like lopping them.

Att. Gen. What was understood by that?

Bourn. The taking off the king, and the duke of York.

L. C. J. Was that the usual phrase among you to signify that?—*Bourn.* Yes, my lord.

L. C. J. Was he there?

Bourn. I have heard it several times, and I suppose he was at the hearing of it.

L. C. J. (To Walcot.) Look you, sir, he speaks of the time of discourse of securing the king, and says you were there then.

Capt. *Walcot.* I had no hand in it.

Att. Gen. We will nail it home upon you; we will call Mr. West. [Who was sworn.

Serj. *Jeff.* Come, Mr. West, do you tell my lord and the jury the whole story.

West. My lord, I came acquainted with the prisoner at the bar last summer vacation, by the knowledge of one Wilcocks, who, I suppose, returned his money out of Ireland. I heard a very fair character of him, and he, I suppose, met with such an one of me; which did incline us both to an intimacy, and to talk freely with one another. About the middle of October, I observed a general discontent in the city, and was afraid there was some design in hand, and was very inquisitive to know it: I was unwilling to be involved and surprised into a sudden ruin, and so thought fit to inquire of them that were most likely to be concerned. I took capt. Walcot for one, being informed that my lord Shaftesbury had sent for him out of Ireland; and capt. Walcot told me, that my lord was also sending for some Scotish gentlemen, on occasion of Carolina; but that he was very cool in Carolina business, and that that was but a pretence. My lord, one morning capt. Walcot came to my chamber, and we discoursed concerning the election of sheriffs carried on in the city, contrary, as we thought, to the justice of it: says he, will the people do nothing to secure themselves? With that he told me a secret, and said there was a design of an insurrection to be made within three weeks or a month, that would make us free, or worse. I told him, I thought it was a certain way to bring us in a worse condition, and that it was very full of hazards. He told me then, he did not know whether he should be concerned: but a little while after he told me, my lord Shaftesbury was engaged in such a design, and he had engaged him in it, and he told me, he had an expectation of being a colonel of horse, and asked me, if I would have any command under him? I told him, I knew some gentlemen of the Temple that I might engage in it; but told him, I had not a constitution to bear the toils of war. My lord, he told me then, that my lord Shaftsbury, to the best of my remembrance, had another design upon the king and the duke, as they came from Newmarket in October last; but he told me he abhorred any such thing, it was ungenerous, and he would not be concerned in it, but only in a general insurrection. But this he did tell me, I think, before the thing was to be executed. I imparted it to nobody, till after the time of both was past: but in the discourse of the insurrection, he told me, I should lend him a suit of silk armour, which I bought about four or five years ago, when the Popish Plot broke out; and he would have had me kept that, and used it myself, which I did decline. Then he told me he had very good swords in Ireland, but he wanted them here. Says he, I am a man that am observed, because I have a correspondence with my lord Shaftesbury; and asked me, If I would provide him a good stiff tuck. I told him I would, and I did bespeak one; but before it was done, the design was laid aside, and the tuck was left upon my hands. I came to understand, that the design was put off by means of Mr. Trenchard, who had discoursed about a fortnight before of great forces he could raise in the West; and the duke of Monmouth sent for him, but his heart failed him, and he could not raise any men; upon which, my lord Grey called him coxcomb. This was about the 19th of November.

Att. Gen. What time of November?

West. The 19th.

Att. Gen. But upon what day?

West. Queen Elizabeth's day.

Att. Gen. No, Sir, that is the 17th.

West. Now after this I understood by capt. Walcot, that Mr. Ferguson had the management and conduct of the assassination in October, and that he likewise was acquainted with the insurrection, and was a great man in it. I met with Mr. Ferguson, and fell into discourse with him, and he treated me, as he always did, with a long story of the miseries of Scotland, and that the people were all in slavery and bondage, and would be so here, if they did not free themselves: And, says he, there are two ways thought upon for it; one is by a general insurrection, and that is gone off; the other is a much more compendious way, by killing the king, and the duke of York. My lord, I told him, I thought the first way was a dangerous way, that the people were in no sort of capacity to carry it on, that the government had the navy and the militia, and this would at the best entail a long war. He told me he thought the other was the best way, and we went to a tavern, where col. Rumsey, and one Row, and he and I, went divers times. They proposed to meet at my chamber as a place of privacy, and little observation. My lord, when they came to my chamber, Mr. Ferguson proposed several ways of doing it. One way was, as the king and duke had their private visits in St. James's, where it was an easy thing for sword-men to kill them. There is one thing I have omitted, and that was after the design of October had miscarried, I think, to the best of my remembrance, capt. Walcot told me, there was another design of attacking the king and the duke at my lord mayor's feast in the hall, or in their return home, in Paul's Church-yard, or at Ludgate; and Mr. Ferguson did likewise tell me the same thing, but the king not dining there, the thing was wholly disappointed. Another way that he proposed was, that they should do it as the king and the duke went down the river, they should lie behind some small ships within a hoy, or some such thing, and so over-run their barge; and if that failed,

they should break a plank with their blunderbusses, and so sink them. Another way was at the play-house, and that was to be done in this manner; there should be 40 or 50 got into the pit with pocket-blunderbusses, or hand-blunderbusses, and pistols and swords; and when the music struck up between the acts, they should fire upon the box; but this they thought was hazardous, and therefore they thought it better to do it as he came back, and pitched upon Covent-Garden under Bedford-Garden wall, because there was a conveniency for a great many men to walk in the Piazza, and there might be another parcel of men planted at Covent-Garden Church-porch, and within the rails, where horses could not come; and while the men within the rails fired, the men in the Piazza might engage the guards, and they in the church-porch to come down, and secure them from escaping.

Sol. Gen. When was this time?

West. I think it was before Mr. Ferguson went for Holland. And, my lord, there was another thing proposed: I think it was colonel Rumsey did say, He wondered that the lords great men, that were so fond of the thing, did not raise a purse, and buy somebody an office, who should rail against the duke of Monmouth, and the Whigs, and by that means get himself an opportunity of access to the king's person. My lord, after these discourses, when my lord Shaftesbury retired to Holland, Mr. Ferguson thought fit to do so too: He was afraid of a book that he had printed, and away he went, and captain Walcot with him. In the mean time I met col. Rumsey several times, and several things were offered but nothing resolved upon. A little after Christmas we met at the Salutation tavern in Lombard-street, and there it was agreed we should send for Mr. Ferguson; and there I writ a canting letter, that he would come for his health; for he was the only man that could manage the affair. When he came over, there was one meeting at the Five-Bells, but I came just as they were coming away, and cannot say what passed there. After that, they came several times to my chamber; and there Mr. Ferguson, Mr. Goodenough, and Mr. Rumbold, undertook to provide the men.

L. C. J. The men, for what?

West. The men for the assassination: that I was not concerned in, either in person or purse, or to procure any body for it. And they did agree to do it in the going to or from Newmarket, and thereupon were several debates, whether it should be done at their going or coming back. Against doing it going down, it was objected, That the guards were left here and there, and they went together; but very often they returned apart, and therefore it was not the safest way going down; and nothing also being prepared, so it was resolved to be done coming back. Then it was considered what arms should be provided: Mr. Rumbold was the man to manage that matter, and was to procure some blunderbusses, some carbines, and some pistols; but there was nothing to be prepared, as I know of, by other persons, but every man was to provide himself. Several meetings there were, they brought their notes, and conferred together about the men; but I remember no names, but Keeling, and Burton; and Mr. Goodenough said, he had spoke to one Hone a joiner; and, I think, he spake of one Manning, and these are all the names I can remember. After they had conferred their notes, I asked Mr. Ferguson, what provisions of money he had made. Says he, I shall have money when the men are provided, but not till then: For, said he, the last time there was some money raised, and put into a man's hand, who never returned it; but since I understand it was paid to Mr. Goodenough. And Mr. Ferguson said, Mr. Goodenough called him fool, for returning some money he had, and not keeping it for his own use; and my lord Shaftesbury had often complained of that injustice done him: The colonel said, Mr. Charlton should pay the money. There was a further debate, how these arms would be got down to Mr. Rumbold's: It was proposed, to send them down by Smithfield carts in chests: Others, to send them down by trusty watermen, who were to cover them with oysters: Others, that the men should carry them; but no resolution taken: Then it was considered, how they should get off. The next thing was, how they should execute this, and it was proposed, That one party was to fall upon the coach-horses, a second upon the coach, a third upon the guards: captain Walcot would not undertake any thing but the guards.

Capt. *Walcot.* What do you say, Sir?

West. Sir, I do say, you were at my chamber, and did say, you were to command that party of horse that were to attack the guards. It was to be done at Rumbold's house; they were to lie there perdue, till the king just came down upon them.

Serj. *Jeff.* At the time of the assassination?

West. Yes, Sir.

Att. Gen. Where were these arms to be carried?

West. To Rumbold's house. I did not see it: But he said he could keep them all private, where nobody could see them till the time of the execution; and that there was a gate they were to pass through, that he could shut upon the horse-guards, that they should not be able to come in for their relief. Mr. Rumbold said, he would bring them off; and said, he thought it dangerous for them to go to the road-way; but he would bring them over the meadows, and come in by Hackney-marsh: But the way which the prisoner did most approve of, was, That they should retire within his wall, there keep till night, being a place they could defend against any force for a day's time.

Att. Gen. Where was this resolution taken?

West. This resolution was taken at my chamber: my lord, as to the attempt, when they designed to make it upon the king's coming from the play-house, one Mr. Row said he

discoursed with one Gibbons, that was the duke of Monmouth's servant, about it, and asked him, if any of their family knew of it? Yes, says he, they all know of it, but they will not be seen in it; and said, that he shewed him the place. My lord, in one of the discourses I had before Mr. Ferguson went for Holland, I had a mind to be rid of the thing, but I did not know how; so I created difficulties, and said, I suppose the duke of Monmouth is to get most by it: what security will you have, you shall not be hanged when the thing is done? He is bound, said I, in honour to hang us all, and make inquisition for this blood, otherwise they will say he is a party. Says he what if I get it under his hand? But, said I, engage his servants, and that will stick upon him. There is one thing I have omitted, which was in the first discourse with captain Walcot about the insurrection of November, he told me, that my lord Shaftsbury was preparing a declaration to be published, in case of an assassination or insurrection; and he asked me, if I would undertake to do one too? for, says he, I would have several people draw it, to pick one good one out of all. And he told me he had made some collections towards it, and shewed me a paper, which was a collection of all the passages in the three king's reigns, king James, Charles I. and this king's, that he called attempts to introduce arbitrary government and popery; and concluded, taxing them with some personal vices, and that the government was dissolved, and they were free to settle another government: these I perceived, were the topics my lord Shaftsbury laid weight upon. I told him that this did require an exact knowledge of the history of those times, and I would not undertake a thing to which I was not competent; and so he desired me to burn the paper, which I did; but for any other declaration, my lord Shaftesbury kept his paper to himself; and I never did see it, though I desired it.

Serj. *Jeff.* Can you remember in whose name the Declaration was to run?

West. No, I do not remember that.

Att. Gen. After the disappointment, what meetings had you?

West. Sir, I will tell you: when the news of the fire came, they adjourned to my chamber, and there considered what they should do: they were in no readiness, nor had any horses; nay I believe the thing could not have been effected, if the fire had not happened; and I was very glad it could not; but for that, I am in the charity of the court. They did endeavour to put [illegible] in a posture, to see if it could be done [illegible]r day; I think they met on Thursday [illegible], and Friday night; but they said, the king would be at home the next day, and the thing was laid aside. My lord, a day, I think, or two after, I went into the city, and went to the Dolphin tavern, where I met with colonel Rumsey, and this Mr. Keeling came in, he was there talking of blunderbusses and pistols in down-right English; I told him, it was a foolish thing to talk so before drawers, and that was the occasion of calling them by the names of Swans-quills, Goose-quills, and Crow-quills. After this thing we met the next week, not at my chamber, colonel Rumsey was mistaken in that, but at the George and Vulture. There was capt. Walcot, Mr. Goodenough, Mr. Ferguson, one Norton, and one Ayliff: they discoursed of the late disappointment; and that one reason was, they had not arms in readiness. Then they agreed, that arms should be bought, and the number was ten blunderbusses, that should be 20 or 22 inches in the barrel: 30 carbines, 18 inches: and 30 cases of pistols, to be 14 inches. My lord, it was put upon me to provide them, for this reason, because I was serviceable to them no other way, and could have a pretence for buying them, because I had a plantation in America; but Mr. Ferguson was to pay the money. My lord, I did bespeak the arms, and paid for them with my own money, and was not paid again a great while; Mr. Ferguson disappointed me; but at last told me, If I would send to major Wildman, he would pay me. But he told me before that, one Mr. Charleton when he came to town, would pay me, but I had none of him. So I told him, I bought those arms upon a pretence I intended to use them, and had spoke to a sea-captain to carry them off to a plantation where I had a concern myself. After that, Mr. Ferguson sent to me to take my money: so I came to him; and found with him Mr. Charlton, and another gentleman, whom I could not distinguish, because it was duskish. Mr. Charlton went down, and then says Mr. Ferguson, I have your money for you; and he paid me in fourscore and thirteen guineas, which was something more than the arms cost; and said he had not the money above half an hour in his hands; by which I did guess it was Mr. Charlton's money. Another thing was, at last meeting with Mr. Ferguson, he did say, there was a man employed to see what conveniency there would be for an assassination between Windsor and Hampton Court; but that was never reported, and so laid aside. This is all I can say concerning the assassination: but I believe they did intend to carry it on; for colonel Rumsey did tell me, he saw the hearts of all the great men were upon it; and it would be convenient to have an army to back it. But in case this assassination had gone on, these things were to be done. It was designed, the lord mayor and the sheriffs should be killed, and as many of the lieutenancy as they could get; and the principal ministers of state, my lord Halifax, and my lord Rochester that now is, and my lord keeper; for which they gave this reason, because he had the great seal; and my lord Rochester, as like to stand by the duke's interest; and my lord Halifax, as being one that had professed himself of the party before, and turned from the right side and had put the court upon that which otherwise they never would have acted, nor had the courage to have done. As for my lord keeper, They said they would hang him for the murder [illegible] and upon the same post Colledge

had hung. Sir John Moore was to be killed, and to be hung upin Guild-hall, as a betrayer of the rights and liberties of the city: and your lordships to be flayed and stuffed, and hung up in Westminster-hall, and a great many of the Pensional parliament hanged up, as betrayers of the rights of the people.

L. C. J. How was this to be done? to flay them and stuff them?

West. Yes, I understood it so.

Att. Gen. At these discourses was this gentleman present?

West. He was not at my chamber so often as the rest; he came not there till towards the latter end; but he was there sometimes when these things were discoursed of.

L. C. J. But you say he did at last undertake to fight the guards?

West. Yes; upon the news of the fire, says he, I believe God shews his disapprobation of the thing. Says Mr. Ferguson, I believe he reserves them for worse punishment. Mr. Walcot said, he desired to have his name concealed. Why, says Ferguson, why should you be ashamed? It is a glorious action, and such an action as I hope to see publicly gratified by the parliament; and question not, but you will be famed for it, and statues erected for you, with the title of 'Liberatores Patriæ.'

Serj. *Jeff.* What was this Ferguson?

West. He is an independent parson.

Serj. *Jeff.* He preached excellent gospel

West. Says he, I have told some nonconformists, and they desired me to forbear; but says he, they are silly people, that do not know how to distinguish between killing a prince for difference in opinion about religion, and destroying a tyrant, for preservation of the rights and liberties of the people. He said, it was an action that would make all the princes in the world tremble, and teach them to use their subjects kindly. My lord, they did design, at the same time when the mayor and the sheriffs were to be killed,. that Mr. Papillon and Mr. Dubois, should be forced to take the office of sheriffs upon them; and if they would not take it, they would use them as they did the other; and that sir Thomas Gold, or sir John Shorter, or alderman Cornish, should be set up for lord-mayor: but rather alderman Cornish as the fitter person, I asked them further, what they would do with the king's natural sons? Says he, they are good lusty lads; I think we had as good keep them for porters and watermen: and for my lady Anne they had as good marry her to some country gentleman for a breed to keep out foreign pretences.

Serj. *Jeff.* I perceive they left nothing unconsidered.

Att. Gen. Mr. West, to repeat all their passages would fill a volume; but as to the continuation of the rising, and whether it was continued?

West. I have a many particulars, but have them not in method.

Sol. Gen. Answer questions then.

West. When Mr. Rumbold came to town, he said, he saw the king come by but with six guards, and believed he could have done it with six men, if he had been provided with arms. This is all I can say, except some little discourse, which I have not time to reduce into method. About Christmas, colonel Rumsey told me, there was a design carrying on among the lords, and great men, by whom I always understood the duke of Monmouth, my lord Russel, my lord Grey, lord Howard, colonel Sidney, major Wildman, Mr. Hambden, for an insurrection; and that this was designed to be done about March. Colonel Rumsey and I were discoursing of it; and colonel Rumsey thought it fit to draw up some things, that we should require of them to do for the people; and a paper was drawn up, but my lord Russel said, they were rejected, and all should be left to the parliament. And colonel Rumsey said, The duke was inclined to gratify the parliament; but the lords about him were for great places, and they would suffer him to do nothing.

Serj. *Jeff.* Now tell us about Culing.

West. I dined at a tavern with colonel Rumsey, Mr. Wade, Mr. Nelthrop, Mr. Goodenough, capt. Walcot, and Mr. Norton.

Serj. *Jeff.* What was your discourse there about?

West. There was no discourse that had any particular point.

Solicitor General. Was there nothing of division of the city?

West. Sir; Goodenough gave some general account, but nothing was done upon it. While we were there, in came Mr. Keeling, to speak with Mr. Goodenough, and Mr. Nelthrop; and in the Gazette that day was an account of the insurrection at Collen; and Mr. Nelthrop, when he came in, called this man Culing. What is that? What do you mean? says he. I was then writing a letter, and told him Culing in Dutch was the same as Keeling in English. Mr. Nelthrop took me aside, says he, what will you say, if I, and some friends of mine, deliver the city, and save the charter, and nobody shall know of it till it be done? But, says he, shall not I be hanged for it? Said I, take heed what you do; nobody will be hanged for any good thing. As to the delivering of the city, there was a treaty between the Scots, and our persons of quality here, and col. Sidney and major Wildman had the management of it, as I understood. At last, they came down to some terms: they would have had 10,000*l.* to buy arms, and came down at last to 5,000*l.* and the earl of Argyle was to head them: but when Mr. Ferguson paid me for the arms, he told me, the Scots business was quite off, and Wildman and Sidney had done ill with the Scots; for after they had kept them, and treated with them two or three months, they broke off, because the Scots would not declare for a commonwealth the first hour, and extirpating of monarchy, and the family of the Stuarts: and that the Scots answer was, that would be to destroy all their interest among

the lords, and providence might order it so, as to bring it to a commonwealth: but that was a business of time. When this broke off, Mr. Ferguson told me, that the duke of Monmouth was willing to speak with me, and Goodenough, and some others. I told him, I never had, nor was willing to speak with him. Then he said, sir Thomas Armstrong would. I told him, I was not willing to speak with him neither. Mr. Goodenough, I believe, did speak with sir Thomas Armstrong. We met at Richard's coffee-house, and adjourned to the Young Devil tavern; there was capt. Walcot, col. Rumsey, Mr. Wade, Mr. Goodenough, and myself, and one Holloway a merchant at Bristol. Mr. Holloway did propose, since the Scotch business was broke off, that they should try what forces they could raise here. And Mr. Ferguson did say, if 3,000 men could be had, he believed the duke of Monmouth, and my lord Russel, would appear at the head of them. They were to divide the city into 20 parts, each 20th part into 14ths and 15ths, and to divide it into streets and lanes; one principal man was to have a 20th part, and to have men under him; and that they should not interfere one with another, they bought a great map of the city of London. My lord, I did not read one line in it, but Mr. Goodenough, being a man of public acquaintance, by reason of his office did undertake it. I think he did propose Mr. Bourn for one, and one Mr. Grains for another, and said he would speak with Mr. Keeling. We had several meetings after this, and Mr. Goodenough did report, that there were 1,300 men out of two of the hamlets. My lord, I stood here while Mr. Bourn gave his evidence; but I suppose he hath a little forgot himself; for he told me he had spoken to one parson Lobb, and he said to him, he would try what his congregation could do; that he had two in New-prison, and he would set them out to see what they could do; that they were poor men, but zealous in their way. I think Mr. Bourn hath forgot himself; for he did mention, that he had spoken to parson Lobb.

Serj. *Jeff.* Then parson Lobb was in; there was another parson in.

West. Yes, and he mentioned Lobb's pound.

Att. Gen. The prisoner was at those several meetings, was he not?

West. Yes, and did shew himself ready to act his part. About a fortnight before the discovery brake out, Mr. Rumbold told me they had a great jealousy Mr. Keeling would discover all the business; that Mr. Keeling's wife and mother cried mightily, and charged him for neglecting his business, and said they were afraid he would do a great deal of mischief to honest people; for he had replied to them, he would not want money, and he would be hanged for nobody. Upon which Rumbold told me, If I were sure of this, says he, I would dispatch him; I would get him into the country, and kill him; but, says he, I will not kill an innocent man: if I thought the thing was not so, I would not kill him for all the world. Mr. Keeling told him he had an overture from one Shoot, of 80*l.* a year.

Att. Gen. After you had notice of the discovery, did you meet?

West. The Saturday before the discovery I dined with Mr. Rumbold, and he took Mr. Keeling along with him. Says he, we won't discourage him too much; it may be, it is not so. Mr. Keeling told him he never wanted money so much in his life. Mr. Rumbold, and one Gale, that was to be one of the assassinates, contrived to help Keeling to money, and lent him 100*l.* Upon the Sunday I had notice the thing was discovered, and that Keeling had accused me, and Mr. Goodenough, and Mr. Nelthrop. On the Monday morning early I thought fit to retire; but we did agree to meet at captain Walcot's lodging. My lord, I came thither pretty early, and all the people came afterwards, that had agreed to come thither, but they designed to go beyond sea. I had no mind to go. They had hired a boat, and gave 5*l.* in earnest, but the next morning it was said the messengers were abroad, and that it was believed the river was beset, and there was no getting away. Then every man shifted for himself, and I shifted by the means of Mr. Bourn, who, I thank him, helped me to a conveniency for two or three days. When we were all retired, they got Mr. Keeling in the city, and Rumbold discoursed him in the presence of several people, where he wished a great many imprecations upon himself, if he had discovered. I told them I did not understand him; for if he had made a discovery, it was a fine way to catch people in. Then there was a discourse of killing him. They proposed to him to go out of town. He refused them, but said, he would go in a few days. That night they followed him, and upon tracing of him they found he had called out his brother, and that he and his brother were gone to the secretary's; and then it was taken for granted, that discovery was made, and every man must shift for himself. Had not Keeling deceived them at that meeting at the tavern, by the protestations he made, somebody had killed him there. Then Mr. Wade said, If the duke of Monmouth would go into the West, we might try a push for it; and the prisoner at the bar said, I am satisfied God will deliver the nation, though he does not approve of the present instruments.

L. C. J. Have you done as to this gentleman at the bar?

Capt. *Walcot.* When was it that I should say these words? Then I desire your lordship would ask him, how many months ago it was he says I gave him the paper?

West. It was in October.

Capt. *Walcot.* Then whether I did not then lie ill of the gout?

West. Not at that time, my lord. This that I say of the paper, was given me at my chamber, and then I think he was pretty well.

Capt. *Walcot.* My lord, I am not so natural-

a fool to think, for me to charge the guards, when another man kills the king, but I am as guilty as he that kills him.

L. C. J. No doubt of it.

West. Capt. Walcot, I would not take away your life to save my own; but I do take it upon me, that you did agree to command, or be one of those that were to fight the guards.

L. C. J. What was the reason he would not kill the king?

West. He said it was a base thing that way, being a naked person, and he would not do it.

L. C. J. So the point is the same; but only you distinguished in the point of your mistaken honour, and thought to kill the king was not so honourable a point as to fight his guards.

Capt. *Walcot.* There is no difference between the one and the other; to do one and the other is the same thing.

L. C. J. Your judgment is now rectified; but what say you to the matter? For now you hear what is fastened upon you, that is, several consults about the securing or killing the king; and your advice was to kill him, and you did go down to Rumbold's house, to view the place where it might be done the more securely; and you did undertake, as several witnesses say, not only Mr. West, but col. Rumsey, and another of them, (Bourn I think it was) that you would fight the guards, if you might have a considerable number of men.

Capt. *Walcot.* My lord, if ever I was at Mr. Rumbold's house, unless it was when I travelled from York by Norwich, and came to London; if ever I was there since, then I am guilty of all the roguery imaginable.

West. I never heard, my lord, Mr. Rumbold say he was there, but col. Rumsey told me so.

Col. *Rumsey.* My lord, he bought an horse, and he said, he did intend to go down; and indeed, to the best of my remembrance, he did say he was down; but I am not certain: but he did buy an horse that cost him, I think, 20*l.*

L. C. J. For that purpose?

Col *Rumsey.* Yes.

L. C. J. Now you hear, this is a little more particular than the other; colonel Rumsey did say before, that you did agree to go down, and, as he believes, you did go down.

Rumsey. I believe Mr. West may remember he bought an horse for that purpose.

West. I remember he bought an horse for service, but I can't say it was to go down thither.

L. C. J. It does import you to tell us upon what account you met so often, and what was your meaning in hearing these things, and consulting of them, and what your raising of men was for, and the declaration written for the people, to please the people when the assassination was over?

Capt. *Walcot.* The declaration, Mr. West says, was in October last.

West. I take it to be so, my lord, to the best of my remembrance; there was this passage; Says he, I believe in a month or three weeks you will be better or worse; so that I measure it by that.

Capt. *Walcot.* My lord, Mr. West does tell your lordship a very long story, and sometimes he names one gentleman, and sometimes another. I am very fearful the jury will be very apt to apply all to me, who was the man least concerned; for I had the gout for several weeks together, and Mr. West came several times to my own lodging to see me; and for that of assassinating the king, it never entered into my thoughts more or less; but here are four gentlemen, who, by their own confession, are sufficiently culpable; they, to wipe off their own stains, are resolved to swear me out of life.

L. C. J. What made you among them?

West. I do take it upon me, he was there three or four times.

Capt. *Walcot.* I did not stir for three weeks or a month. I came to town on Ash-Wednesday, and then fell ill of the gout, and that continued for divers weeks. For a month's time that the king was at Newmarket, I am confident, I was not out of my chamber, unless I made a shift to scramble to Stepney, and dipped my foot in every well of water I came by.

West My lord, I do remember this passage, That he was afraid he should not be able to draw on his boot, because he had the gout.

Capt. *Walcot.* I desire to know, my lord, When is the time Mr. West speaks of, that I gave an account of killing the king at my lord mayor's feast?

West. I do not charge you positively with it: but I had it from you or Mr. Ferguson; but I must do the prisoner justice, he said, he would be no way concerned in it.

Att. Gen. Pray swear Mr. Blaithwait. [Which was done.] Pray tell my lord, and the jury, whether captain Walcot owned that to be his hand.

A Letter being then produced from capt. Walcot to Mr. Secretary Jenkins.

Blaithwait. My lord, I remember, when capt. Walcot was examined before the king, he did own this to be his hand.

Serj. *Jeff.* Give it in.

Cl. of the Cr. 'Honoured Sir, July 5th, 1683.'

L. C. J. Who is it directed to?

Cl. of the Cr. There is no direction.

Blaithwait. It was directed to Mr. Secretary Jenkins, as I find by the minutes I then took of it.

L. C. J. Here is the cover, it seems.

Cl. of the Cr. 'To the right hon. sir Leoline Jenkins, &c.'

'Honoured Sir; I being in the country, and to my great trouble seeing myself in his majesty's proclamation, I came last night to town, resolving to lay myself at his majesty's feet, let him do with me what he pleaseth: This is the first crime I have been guilty of since his majesty's restoration, and too soon, by much now. If his majesty thinks my death will do him more good than my life,

'God's will and his be done. Until I sent 'your honour this letter, my life was in my 'own power, but now it is in the king's, to 'whom I do most humbly propose, That, if his 'majesty desires it, I will discover to him all 'that I know relating to England, Scotland or 'Ireland, which I suppose may be something 'more than the original discoverer was able to 'acquaint his majesty with, especially as to 'Ireland: There is not any thing his majesty 'shall think fit to ask me but I will answer him 'the truth as pertinently and as fully as I can. 'My intimacy with a Scotch minister, through 'whose hands much of the business went, I 'judge occasioned my knowing very much. 'And I do further humbly propose, That if his 'majesty thinks it advisable, I will follow 'those lords and gentlemen that are fled into 'Holland, as if I had fled thither, and had 'made my escape also; and will acquaint the 'king, if I can find it out, what measures they 'resolve of taking next: I do assure his majes-'ty, the business is laid very broad, or I am 'misinformed. And I am sure as to that par-'ticular, if my being with his majesty and 'your honour be not discovered, I shall be ten 'times abler to serve him than either Mr. 'Freeman or Mr. Carr, for they will trust 'neither of them. There's scarce any thing 'done at court, but is immediately talked 'all the town over: Therefore if his majesty 'thinks what I have presumed to propose ad-'visable, I do then further most humbly 'propose, That my waiting upon his majesty 'may be some time within night; that your 'honour will acquaint me the time and place 'where I may wait upon you, in order to it, 'that it may be within night also, and that 'nobody may be by, but his majesty and your 'honour: And if his majesty pleaseth to par-'don my offences for the time past, he shall 'find I will approve myself very loyal for the 'future; if not, I resolve to give his majesty 'no further trouble, but to lie at his mercy, let 'him do with me what he pleaseth. I purpose 'to spend much of the day in Westminster-'hall, at least from 2 o'clock to 4. I beg 'your pardon I send your honour this by a 'porter: I assure your honour, it was for no 'other reason, but because I would not have a 'third person privy to it; and that I might 'have the better opportunity to make good my 'word to his majesty, and to approve myself,

'Your honour's most humble servant,

'THOMAS WALCOT.'

Att. Gen. Swear capt. Richardson. [Which was done.]

Capt. *Richardson.* My lord, On Sunday at night Mr. Walcot desired to speak with me, and he seemed very desirous to wait upon his majesty, and unbosom himself to the king: Mr. Attorney said, I should give him notice to prepare for his trial, which I did, and told him, he should want nothing to prepare himself for his trial. Yesterday morning his son came, and I sent my clerk to stand between them, and he had prepared this little paper tied close with a thread, which my man told me he did intend to give his son; and he desired me, since I had discovered it, I would make no use of it. The letter was to capt. Tracy, that was his landlord, to speak to col. Rumsey, that he would be tender of him, and tell him, he had ground enough to serve the king upon other men; and also to speak to Mrs. West, to desire the same thing of her husband. The last words in the note were, 'If you cannot be 'private, leave the issue to God.'

L. C. J. Mr. Walcot, have you any thing to say for yourself, against this plain evidence?

Capt. *Walcot.* My lord, they have taken a great deal of pains, and made long speeches, though very little of them relating to me, though too much. Colonel Rumsey tells your lordship of a design they had to assassinate the king, and carry on a war, or something like it, when I was out of the kingdom: that at Mr. Shepherd's house they drew up a Declaration; and that upon Mr. Trenchard's saying, things were not ready. This was before I came into England, and he says this was agreed at Mr. West's chamber before I came out of Holland, that Mr. Rumbold undertook it. Then he says, that after I came over, I undertook to charge the guards while the king was killing. My lord, that was a very improbable thing; for I look upon it, there is no difference between killing the king, and securing his guards. These gentlemen, by what they have said, do sufficiently convince the court, and all that hear them, that they are sufficiently dipped themselves. Here they combine to take away my life to save their own. Then they tell you, that Mr. Goodenough and Mr. Rumbold brought notes about men that were to assassinate the king; but they do not tell your lordship I was privy to any of these notes, nor that I knew any of them. It is in itself very improbable, that I would engage in so desperate an undertaking with men I never saw nor heard of in my life. Then he tells you, that Mr. Ferguson had been at a place where I was, and there inquired what Mr. Goodenough had done; and withal, they told you, they met at my lodging: now that their meeting at my lodging was by col. Rumsey's appointment, I knew nothing of it. Most of these meetings were by colonel Rumsey's appointment, or Mr. West's: I accidentally came amongst them sometimes, but all my business was only to hear news; nothing was agitated concerning killing the king, or levying of war, more or less, as I know of. I must confess, I did hear that there was a design by a great many lords and gentlemen, and others, for asserting of their liberties and properties; but I was never in any consultation with them, or any message to them, nor I never saw one of these lords, that I know of, that are said to be concerned. Therefore, I say, it is very improbable I should be so far concerned as they seem to represent it. They met at the Five-Bells; they allow themselves I was not at that

meeting. For Mr. Keeling, he does not at all charge me. What I said to Mr. West relating to the business he talks of in October last, that, my lord, is out of doors, in point of time. I pray God forgive him for what he has said. I cannot say more than I have.

L. C. J. Pray where do you live? Where is your habitation?

Capt. *Walcot.* My habitation is in Ireland, my lord.

L. C. J. Pray what do you do here?

Capt. *Walcot.* I was invited by my lord Shaftesbury to go governor to Carolina.

L. C. J. That design was a great while ago frustrated.

Capt. *Walcot.* My lord, it was some while before I came over, and so my lord gave his commission to another. But being in England, my lord Shaftesbury invited me to go to Holland with him, which I did; and when he died, I came to London; I had not been here a fortnight but I fell ill of the gout, and that continued three months: another thing was, my son was here, and I designed to marry him, and make provision for my younger children: My lord, I have a competent estate; I hope it is no great crime for a man of an estate to be here.

L. C. J. You confess, you heard some discourse of these things; what made you to frequent their company, when you heard these things?

Capt. *Walcot.* It was my folly to do it.

L. C. J. Ay, but you are to understand, that folly in these cases is treason.

Capt. *Walcot.* I conceive, my lord, it is only misprision of treason. I did hear of a great deal that these gentlemen have said, and that there would be an insurrection; but I had no hand, directly or indirectly, in it; nor did it enter into my thoughts, either directly or indirectly, the death of the king. When some gentlemen have talked to me about it, I abominated it, and told them, it was a scandalous thing, a reproach to the Protestant religion: for my part, I had children would bear the reproach of it, and I would have no hand in it.

L. C. J. Look you, captain Walcot, that you did deny to do the fact, to assassinate the king, that is very true; they say so, that you did always deny it; for you stood upon this point of gallantry, a naked man you would not assassinate. And then you talk of misprision of treason: for a man to hear of treason accidentally, or occasionally, and conceal it, is but misprision; but if a man will be at a consult where treason is hatched, and will then conceal it, he is guilty of treason therein; therefore do not mistake your case. So that your point of law fails you, and every thing fails you, in this case. It appears plainly by them, that you were not only privy to the consult as an auditor, but as an actor; you chose your post, and upon this point of gallantry you would venture yourself, not upon a naked man, but upon persons that would oppose you.

Capt. *Walcot.* Certainly no man that knows me, would take me for such a very fool, that I would kill the king's guards; as if I were not sensible, that was equal treason with the other.

Att. Gen. Ill men are always fools.

Capt *Walcot.* It is clear they have laid their heads together, they have contrived to take away my life, to save their own; it is plain enough.

L. C. J. There is nothing more reasonable, nothing more just in the world, than to make use of some traitors to discover and convict the others, else would treason be hatched securely. There is nobody capable (where treason does not take effect) of making an evidence in such a case, but some of you that are conspirators. You do not publish it at the market-cross. And if you could gain but this point, that none that are concerned with you in the conspiracy should be witnesses, it would be the securest thing in the world to hatch treason. For you would be upon this point; either it shall take effect, and then it is too late, or if it do not, and the conspirators are not to be believed, then I am secure, nobody in the world can convict me.

Juror. We desire he may be asked what he says to the Letter.

L. C. J. Well, what say you to it? You have made proposals you will discover others, and you will give intimation to the king of the measures the rest of the conspirators were taking in Ireland, and other places; upon what design did you write that? And what induced you to it?

Capt. *Walcot.* My lord, I have told your lordship, that I have heard a great many discourses relating to that thing, and heard it mostly by Mr. Ferguson, with whom I had a great intimacy, and I did according to my promise give that account of it; but if his majesty would not believe me, I can't help it; but the king was not pleased with me, because I could not descend to particulars; and I could not, because I never had been in their company, nor knew nothing but what I had once by a private hand. I dealt ingenuously and truly with the king, and told him what I knew.

L. C. J. Pray observe the contents of your letter. You made this proposal, That you being in the proclamation, you were one of the fittest men to understand and smell out the measures of the other persons. By this it is plain, you took yourself to have an intimacy, and some intrigue, with the other persons that you thought were impeached: your letters does import, that you had such an interest with those persons, that they would have communicated their counsels to you.

Capt. *Walcot.* My lord, I never spake but with Mr. Ferguson, who was a man they did much confide in; and I knew very well, that by my interest in Mr. Ferguson, I should have an interest in the rest. But truly, whether the duke of Monmouth be there, or not, I know not. I do not know him if I meet him. I was never at any consult, never at any of these debates.

L. C. J. What did you mean by this, that this was your first crime? You knew what you was charged with; it was for high treason.

Capt. *Walcot.* My lord, it is my first crime. My lord, I have heard there was an insurrection intended, I have heard of the persons that were to carry it on; I did look upon this as a misprision of treason; but that I ever acted in it, or intended it, I utterly deny.

L. C. J. The last question is, Whether you have any witnesses?

Capt. *Walcot.* I have only a young man or two, if he be here, to prove the time that I was ill of the gout, and therefore it is improbable I should be so far concerned.

L. C. J. I must tell you before-hand, that an argument from the topic of probability, will do you but little service, when there is positive evidence against you. This it will import you to make a little answer to, if you can, What you meant by your application to colonel Rumsey, desiring captain Tracey to speak to him and Mr. West; what do you mean by that?

Capt. *Walcot.* My lord, would not any man in my circumstances desire a man to deal tenderly with him?

L. C. J. Well, is this young man come in? Come, Sir, what have you to say on the behalf of the prisoner at the bar? Or will you ask him any questions?

Capt. *Walcot.* Only about what time I fell ill of the gout, and how long I continued so?

L. C. J. Do you know about what time he fell ill of the gout, and how long it continued?

Wit. My lord, I can't remember certainly the time, but I believe it was about three months; I can't tell certainly when it began.

Capt. *Walcot.* My lord, it is very improbable, that when I was not able to put a shoe on, nor wear a boot, I should engage in so hazardous and desperate an undertaking.

L. C. J. Have you done, Sir?

Capt. *Walcot.* Yes, my lord.

Sol. Gen. May it please your lordship——

Capt. *Walcot.* The jury will take notice, here are four men to save their own lives swear me out of mine.

Solicitor General. May it please your lordship, and you gentlemen of the jury, the evidence you have heard has been very long, and I observe that capt. Walcot has complained of it; it has been delivered mostly in general terms; and is afraid you should not apprehend it aright, to see those parts wherein he is concerned, but mistake what is said in general to be spoken against him. I will therefore do him the justice as to recapitulate that part of the evidence that does immediately concern himself. It has been very full, and given by every one of the four witnesses that have been produced against him, besides the letter under his own hand, which is twice as many more.

The first witness I shall remind you of is Mr. West, though not produced first, yet because his evidence goes further backward; his acquaintance began with him in last summer vacation, he became soon intimate with him, and captain Walcot did unbosom himself, and tell him, that there was a design to make an insurrection; that it was my lord Shaftesbury's design that he was to be an officer, I think he said a colonel of horse; he invited Mr. West to partake with him in that design, and did propose to him the advantage of a command in the army; but he not being qualified declined it. He tells you further, that he did acquaint him there was a design to assassinate the king; and it is easy enough to be believed, if there was one designed, the other was too. And you see all along the only dispute was, whether the assassination should be first, or follow; for to raise arms against the king is directly to assassinate the king; for it cannot end any other way with security to those that raised it. He told Mr. West he would not be concerned directly in the assassination, but in the insurrection he would; he was persuaded to come in. This was, last October, discoursed with Mr. West; they were to rise in November. Then col. Rumsey comes in, and he tells you, that there was a design to rise in November. The lord Shaftsbury sent him to persons concerned in the conspiracy, to know in what readiness it was; but they being disappointed of men, whom they expected to rise in the country, they did defer it at that time; at which my lord Shaftsbury being concerned, went into Holland, and I think the prisoner himself hath told you he went with him. The design was not then laid aside, but still carried on; the most material man, Mr. Ferguson, being in Holland, there was some little stop put to it, that is, to the swift progress of it; and therefore he was sent for over to manage it, as being the only man in whom all persons had confidence. When he comes over, he brings captain Walcot along with him. Mr. Ferguson meets at Mr. West's chamber; this Mr. West and col. Rumsey give an account of, they both swear it. Several meetings there were in which capt. Walcot was not, and possibly at those times he might be sick of the gout, and that might occasion his not being there. But afterwards both tell you, that capt. Walcot did meet at Mr West's chamber, and there was debated particularly the assassination of the king; and it was agreed to be at Rumbold's house called the Rye, looking upon it as a very convenient place, as those that know it say; there being a narrow passage that it was easy to assault, and hard for persons to escape; and with 40 or 50 men, thereabouts, it was a design very likely to have succeeded. Capt. Walcot's share in this was not directly the assassination of the king, that he would not be concerned in, being a soldier, it was beneath him to do that; but his part was to fight the guards, he looked upon that as the more honourable employment; men that were armed to engage them. This is proved both by Mr. West and col. Rumsey.

In the next place, gentlemen, when this did not succeed, but was prevented by the great providence of God Almighty, as you have

heard, they carry on the design still, and take it into their councils, and resolved to carry it on, either at Windsor, or in his passage from Windsor to Hampton-Court; but no place was certainly fixed upon; and I think the latter resolution was, that it should be done at the bull-feast, an entertainment that was designed here in the fields. Now, gentlemen, while this was carrying on, it was necessary to carry on the other part too, that is, the insurrection; and that capt. Walcot is all along concerned in. He is present at the meetings in the taverns, where they discoursed concerning men to secure the king. This is Mr. Bourn's evidence, that at the Dragon-tavern on Snow-hill, there they met to consult to secure the king and the duke. That he was present at the meeting in London, this is sworn by all, by col. Rumsey, Mr. West and Mr. Bourn, where Goodenough was to give an account what success he had in the list made of dividing the city in several parts, and raising men out of every division, and capt. Walcot met for to know what progress they had made in it. Gentlemen, every one of these are overt acts, to declare his intention to kill the king, and are all high treason.

The gentleman at the bar cannot attempt to mitigate his offence, by saying he would not directly assassinate the king, but would be the man to assist in raising arms; this makes him equally guilty. To conspire to raise arms against the king, certainly that is as great a declaration of his imagination of his heart to kill the king, as any thing in the world. and this being proved upon him, there is no room for any objections for him to make; some he hath made, not worth the mention; but because they are those he thinks to put his life upon, I will take notice of them to you.

He says, the witnesses are not to be credited, because they have been concerned in the same conspiracy.

Gentlemen, because they have been concerned, therefore they are to be believed; for who should know this but those that were so concerned? I think, gentlemen, there is no good man, no honest man, would desire a better evidence; for better evidence could not have been had, unless the thing had taken success; and I am sure that is far from the heart of any man, that has the heart of a christian, to wish. Does he pretend to intrap these witnesses in any contradictions? does he pretend to say these witnesses have consulted together to make up this story to accuse him for his life? There is nothing pretended of it, but on the contrary he owns he met these men; but the end of his going there was only to hear news. I thought that had not been the proper place to hear news in; certainly no man that comes there would have been admitted merely for curiosity; certainly he must bring a mind to accompany them in all their villainy: but his own confession you have for that. I think he hath hardly confidence to deny, but he was at several consults for raising arms at Mr. West's chamber. You were when Goodenough gave an account, at the Green-Dragon tavern. You were where discourses were of raising arms to secure the king; and nothing he has said, gentlemen, to clear himself.

Gentlemen, here is that above all evidence; here is almost the confession of the prisoner, the letter of his own hand. That letter (when he sees his name in the proclamation) acknowledges it is his first crime, he says: what was that crime? He was proclaimed as a traitor. He says in his letter, that his life was at the king's mercy; that if his death would do the king more service than his life God's will be done; that if his majesty would admit him to come in, and use mercy, he would tell all he knew concerning England, Scotland, and Ireland, which he thought would be more material than any thing that another discoverer could tell. This shews he hath a deeper hand than any of these men that have given this evidence. You see they accuse themselves; they confess this, and it is a great mercy they have so done; for all your lives and liberties in the person of the king are preserved; and God be thanked, that you are here this day to sit in judgment upon him that would have deprived you of them.

L. C. J. Look you, gentlemen of the jury, here is the prisoner at the bar indicted of high-treason, and it is for conspiring the death of the king, and for endeavouring to raise arms within his kingdom against him. You hear he denies himself to be guilty; you have heard the evidence, and this does plainly appear upon what you have heard, that there was a dangerous and desperate plot upon the king, to have destroyed him, that is most certainly plain, the prisoner himself confessed it; that there were several consults and meetings concerning it, and that this had a great progress from time to time, for near half a year, is very plain: that he was at many consults, is very certain; that there was a design to raise an insurrection and war within this nation, is as plain by them all; it was designed the last winter to have done it. The witnesses (who are certainly the persons most capable of giving evidence) tell you there were several times appointed, and still they were by one providence or a other disappointed. All of them tell you, there was a design to kill the king and duke at the Rye in Hertfordshire, as they came from Newmarket: this is very plain too, that this gentleman at the bar knew of this; this he himself confesses, that he was at several of the consults; and this he excuses it by, that that was misprision of treason, if he did not undertake to do any thing. As to that, gentlemen, we do tell you, the law is, that those that are at a consult for the killing the king, or doing of a traiterous act, that is in them high treason, his being at the consulting of it. It is true, it would excuse and mitigate the fact, if they should come afterwards and discover it, it might intitle them to the king's mercy; but to be at a consult upon a treasonable design, to meet for

that purpose to hear the plot laid, and a design *to take away the king's life, or to raise arms* against him and to say nothing of this, this is downright treason, and it is not misprision of treason; his law that he relies upon, fails him there. It is very plain by his own words, be heard of this conspiracy, and he kept it secret, and says nothing of it; and this he says is his crime that he mentioned to the king; so he would mitigate it by saying, it is but misprision of treason. But without doubt, the meeting at several times upon this design, if he had promised and undertaken nothing in it, his keeping of it private as he has done, makes him guilty of high treason; so that out of his own words it is plain that he is guilty.*

But then, consider what two witnesses positively prove upon him: they prove, that he did there deny to be any of them that should assassinate the king; thus says col. Rumsey, and thus says Mr. West; but he would be one of them that should fight the guards, and he did undertake to fight the guards, as both of them positively swear. This is done with circumstances of overt acts too, as the providing of horses, and a tuck was to be prepared in order to it, and a tuck he did prepare; whether he did go down, that is a little dark, but he did agree to go down.

Gentlemen, It is plain by what Mr. West said of him that he had a design formerly in my lord Shaftesbury's time to have raised war; he had undertaken to be a colonel of horse under my lord Shaftesbury, and he offered Mr. West to be one of his officers under him. This is a design to raise war against the king, and declares it sufficiently. That which makes the evidence further plainly and greatly clear, is a letter whereby he does submit to the king's mercy, but proposes that himself is abler to instruct the king in these matters, than any of those that had made former discoveries; and therefore if his majesty should think fit, he would make him a full discovery, not only of things in this kingdom, but of the transactions with other kingdoms, that is, Scotland and Ireland, in which he takes himself to be more capable of discovering to the king than any body else, because he was concerned with the agents there; which shews this plot hath gone a great way: this design hath gone into other of the king's dominions, and it is to be feared it is larger than the king knows. It is time to nip these treasons when they are gone so far; certainly a more barbarous design was never thought of by mankind. We have had certainly as many engagements to the king, as any subjects ever had to any prince whatsoever: he has done as many acts of grace; we have lived as peaceably as any people under a prince can ever expect to do; he hath shewed himself with as much kindness, with as much lenity, even to his very enemies, as any prince that ever we read of: the preservation of our religion, and the laws of the kingdom; our laws and liberties, and all our happiness, depend as much upon his life as they ever did upon the life of any prince, or ever can do; so that we ought all to be concerned even to the last drop of our blood, to preserve him: but how this mischievous design should enter into the hearts of men to undertake to kill him in such villainous and barbarous a manner as this, may justly make us astonished.

Gentlemen, you hear your evidence, you have a very strong evidence, in this case, and stronger, I think, than could be expected in the case of treason.

The Jury went out for about half a quarter of an hour, and returned, and brought the prisoner in Guilty.

See an account of his Execution, at the end of lord Russel's Case

This Judgment against Walcot, after the case had been several times argued at the bar, was reversed in B. R. Trin. 8 W. 3. per totam curiam, see 2 Salk. 632. 4 Mod. 395. See, too, East's Pl. Cr. c. 2, s. 70. This reversal was affirmed in Dom. Proc. Of the proceedings upon which affirmance sir Bartholomew Shower's Report (Cas. in Parl. 127) is as follows:

DOMINUS REX v. WALCOT.

Writ of Error to reverse a reversal in B. R. of an attainder for Treason before Commissioners, &c. at the Old Bailey, against Walcot. The Record was thus:

Gulielmus Tertius Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Rex, fidei defensor' &c. dilect' et fideli nostro Johanni Holt Militi, Capitali Justiciario nostro ad placita coram nobis tenend' assign', salutem. Quia in recordo et processu, ac etiam in redditione judicii cujusdam indictamenti versus Thomam Walcott, nuper de London generosum modo defunct', pro quibusdam altis proditionibus personam Domini Caroli secundi nuper Regis Angliæ tangent' modo indictat' fuit et superinde per quand' jur' superinde intr' præfat' nuper Regem et præfat' Thomam Walcott, capt' coram Justic' dict' nuper Regis ad gaolam deliberand' assign' convict' exit', et judicium superinde reddit' fuit pro præfat' nuper Rege versus præfat' Thomam Walcott, ut dicitur, quæ quidem recordum et processum prædict' causa erroris intervenient' in curia nostra coram nobis venire fecimus, et judicium inde in eadem curia nostra coram nobis reversatur. Et quia in reversatione judicii prædict' coram nobis super brev' de error' prædict', error intervenit manifestus ad grave dampnum cujusdam Isabellæ Dillon viduæ, Comitissæ Roscomon, nuper uxori Wentworth Dillon Armig', nuper comitus Roscomon in regno nostro Hibernico, sicut ex querela sua accepimus, nos errorem, si quis fuerit, modo debito corrigi, et eidem Isabellæ

* As to the distinction in such cases between Treason and Misprision of Treason, see East's Pleas of the Crown, c. 2. s. 7. c. 3. s. 1. and the authorities there referred to.

plenam et celerem justiciam fieri volentes in hac parte:

Vobis mandamus, quod si judicium super breve de errore prædict' reversat' sit, tum recordum et processum prædicta, cum omnibus ea tangent', nobis in parliamentum nostrum ad proximam sessionem, vicesimo octavo die instantis mensis Julii tenend', distincte, et aperte mittatis, et hoc breve, ut inspect' record' et processu prædictis, ulterius inde de assensu Dominorum Spiritualium et Temporalium in eodem parliamento existent', pro errore illo corrigendo fieri fac', quod de jure et secundum legem et consuetudinem regni nostri Angliæ fuerit faciend'. Teste Thoma Archiepiscopo Cantuar', et cæteris Custodibus et Justiciariis regni, apud Westm', sexto die Julii, anno regni nostri octavo. MARTIN.

Respons' Johannis Holt Mil', Capital' Justiciarii infra nominat'.

Record' et process' unde infra fit mentio, cum omnibus ea tangen', Domino Regi infra nominat' in præsens parliamentum propriis manibus protuli, in quodam record' huic brevi annex', prout intérius mihi præcipitur.
J. HOLT.

Placita coram Domino Rege apud Westm' de termino Paschæ, anno regni Domini Willielmi tertii nunc Regis Angliæ, &c. septimo. Rot. 3.

London ss. Dominus Rex mandavit Justic' suis, per literas suas patentes sub magno sigillo, ad inquirend' per sacram' proborum et legalium hominum civitat' London, ac aliis viis, modis, et mediis, quibus melius sciverint aut poterint de quibuscunque prodition', misprision', prodition', insurrection', rebellion', et al' malefactis, offens', et injur' quibuscunque; necnon Justic' suis ad gaolam suam de Newgate pro civitat' London de prison' in eadem existen' deliberand' assign', et eorum cuilibet breve suum in hæc verba:

Gulielmus tertius Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Rex, fidei defensor, &c. Justiciar' suis per literas suas patentes sub magno sigillo Angliæ confect' ad inquirend' per sacram' proborum et legalium hominum civitat' London, ac aliis viis, modis, et mediis, quibus melius sciverint aut poterint de quibuscunque prodition', misprision', prodition', insurrection', rebellion', et al' malefactis, offens', et injur' quibuscunque, necnon Justic' suis ad gaolam suam de Newgate pro civitat' London de prisonariis in eadem existen' deliberand' assign', et eorum cuilibet, salutem. Quia in recordo et processu, ac etiam in redditione judicii cujusdam indictamenti versus Thomam Walcott nuper de London gen' defunctum, pro quibusdam altis prodition' person' Domini Caroli secundi nuper Regis Angliæ tangent', unde indictat' est, et superinde per quandam jur' patriæ inter præfat' Dominum nuper Regem, et præfat' Thomam Walcott, capt' coram Justiciar' dicti Domini Caroli secundi nuper Regis Angliæ, &c. ad gaolam prædict' deliberand' assign', convict', et judic' superinde reddit' sit, ut dicitur, error intervenit manifestus ad grave dampnum Johannis Walcott gen', filii et hæred' præd' Thomæ, sicut ex querela sua accepimus: Nos errorem, siquis fuit, modo debito corrigi, et eidem Johanni plenam et celerem justitiam fieri volentes in hac parte, vobis mandamus, quod si judicium reddit' sit, tunc record' et process' prædict', cum omnibus ea tangent', nobis, sub sigillis vestris, vel un' vestrum, distincte et aperte mittat', et hoc breve, ita quod eа habeamus a die Paschæ in tres septiman', ubicunque tunc fuerimus in Anglia, ut inspect' record' et process' prædict' ulterius inde pro errore illo corrigend' fieri faciamus, quod de jure, et secundum legem et consuetudinem regni nostri Angliæ fuerit faciend'. Teste meipso apud Westm' decimo septimo die Martii, anno regni nostri septimo.

Executio istius brevis patet in schedula et recordo huic brevi annex'.

Respons' Thomæ Lane Mil', Major' civitat' London, ac un' Justic' infrascript' record' et process', unde in brevi supradict' fuit mentio, sequitur in hæc verba.

"London ss. Memorand', quod per quandam inquisition' capt' pro serenissimo Domino Rege, apud Justice Hall in the Old Bailey, London, in parochia sancti Sepulchri in wardo de Faringdon extra London prædict', die Jovis, scilicet, duodecimo die Julii, anno regni Domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Regis, fidei defensor' &c. tricesimo quinto, coram Willielmo Pritchard' Mil', Majore civitat' London, Francisco Pemberton Mil', Capitali Justic' Domini Regis de banco, &c. ac aliis sociis suis Justiciariis dicti Domini Regis, per literas patent' ipsius Domini Regis eisdem justiciar' prænominat', et aliis, ac quibuscunque quatuor vel plur' eorum, sub magno sigillo dict' Domini Regis Angliæ confect', ad inquirend' per sacrament' proborum et legalium hominum de civ' London, ac aliis viis, modis, et mediis, quibus melius scierint aut poterint, tam infra libertat' quam extra, per quas rei veritas melius sciri poterit, et inquir' de quibuscunque prodition', misprision', prodition, &c infra civitat' prædict', tam infra libertat' quam extra, per quoscunque et qualitercunque habit', fact', perpetrat', sive commiss', per quos vel per quæ, cui vel quibus, quando, qualit', et quomodo, et de aliis articulis et circumstant' præmissis, et eorum aliquod vel aliqua qualitercunque concernen' plenius veritat', et ad eadem et al' præmissa audiend' et terminand' secundum legem et consuetudinem regni dicti Domini Regis Angliæ assignat', per sacrament' Rich' Aliearm', et aliorum proborum et legalium hominum civitat' London præd', qui adtunc et ibidem jurat' et onerat' existent' ad inquirend' pro dict' Domino Rege pro corpore civitat' prædict' extitit, præsentat' quod Tho' Walcott nuper de London gen', ut falsus proditor contra illustrissimum et excellentissimum princi-

Dominum nostrum Carolum secund', Dei grat' Angl', Scot', Franc', et Hibern' Regem, et naturalem Dom' suum, timorem Dei in corde suo non habens, nec debit' ligean' suam ponderan', sed instigatione diabolica mot' et seduct', dilectionem veram et debitam, et naturalem obdient', quas verus et fidelis subdit' dict' Domini Regis erga ipsum Dominum Regem gereret et de jure gerere tenetur, penitus subtrahens, et totis viribus suis intenden' pacem et communem tranquillitat' hujus regni Angliæ perturbare, et guerram et rebellion' contra dictum Dominum Regem suscitare et movere, et gubernat' dicti Domini Regis in hoc regno Angliæ subvertere, et dict' Dominum Regem a titulo, honore, et regali nomine, coron' imperial' regni sui Angliæ deponere et depravare, et dictum Dominum Regem ad mortem et finalem destruction' adducere et ponere, secundo die Martii, anno regni Domini Caroli secundi nunc Regis Angliæ, &c. tricesimo quinto, et diversis al' diebus et vicibus, tam antea, quam postea, apud parochiam sancti Michaelis Bassishaw, in warda Bassishaw London, malitiose et proditorie, cum diversis aliis proditoribus jur' præd' ignot', conspiravit, compassavit, imagnat' fuit, et intendebat dictum Dominum Regem, supremum Dominum suum, non solum de Regali statu, titulo, potestate, et regimine regni sui Angliæ deprivare et dejicere, verum etiam eundem Dominum Regem interficere, et ad mortem adducere et ponere, et antiquam gubernat' hujus regni Angliæ mutare, alterare, et penitus subvertere, ac stragem miserabilem inter subdit' dict' Domini Regis per totum regnum suum Angliæ causare et procurare, ac insurrection' et rebellion' contra dict' Dominum Regem movere et suscitare infra hoc regnum Angliæ, et ad easdem nefandissimas prodition', et proditorias compassation', imagination', et proposita sua præd' preimplend' et preficiend' idem Thomas Walcott, et falsus proditor, tunc et ibid' et diversis aliis diebus et vicibus tam antea, quam postea, malitiose, proditorie, et advisate se assemblabat, conveniebat, et consultabat cum præd' al' proditoribus jur' prædict' ignot', et eum eisdem tractabat de et pro eisdem suis proditionibus, et proditoriis compassation', imagination', et propositis suis prosequend', exequend' et perimplend', quodque idem Thomas Walcott, ut falsus proditor, malitiose, proditorie, et advisate tunc et ibidem, et diversis al' diebus, et vicibus, tam antea quam postea, super se assumebat, et prædict' aliis proditoribus promittebat se fore auxiliant' et assistent' in execution' prodition', et proditor' compassation', imagination', et proposit' sua prædict' perimplend' et perficiend' et easdem nefandissimas prodition', et proditor' compassation, imagination', et proposita sua prædict' perimplend' et perficiend' idem Thomas Walcott, ut falsus proditor, malitiose, proditorie, et advisate tunc et ibidem arma, videlicet, (Anglice, *Blunderbusses*) Bumbard' (Anglice *Carabines*) Sclop' (Anglice *Pistols*) et procurabat et præparabat contra ligeantiæ suæ debit', contra pacem dicti Domini nunc, coron' et dignitat' suas, &c. necnon contra formam statut', in hujusmodi casu edit' et provis', &c. per quod præcept' fuit, videlicet, civitat' prædict', quod non omitt', &c. quin caperent præfat' Thomam Walcott, si, &c. ad respond', &c. et modo, scilicet, ad deliberation' gaolæ dicti Domini Regis de Newgate tent' pro civitat' London apud Justice Hall prædict', in dicta parochia sancti Sepulchri, in warda de Faringdon extra London prædict', dicto die Jovis, undecimo die Julii, anno tricesimo quinto supradict', coram præfat' Willielm' Pritchard Mil', Majore civitat' London' ac aliis sociis suis Justiciariis dicti Domini Regis ad gaolam suam de Newgate de prison' in ea existen' deliberand' assign', præfat' Justic' dicti Domini Regis prius nominat' per manus suas proprias deliberaver' indictament' prædict' hic in cur' de recordo in formam juris terminand', &c. super quo ad istam eandem deliberation' gaolæ dict' Domini Regis de Newgate, tent' pro civitat' London præd' apud Justice Hall prædict', dicto die Jovis duodecimo die Julii, anno tricesimo quinto supradict', coram præfat' Justic' ult' nominat' ven' præd' Thomas Walcott, sub custod' Dudlei North Mil', et Petri Rich arm', Vicecom' civitat' prædict' (in quorum custod' ex causa prædicta præantea commiss' fuit) ad barram hic duct' in propria persona sua, qui committitur præfat' Vic' civitat' London, &c. et statim de præmissis prædict', in indictament' prædict' specificat', ei superius imposit' allocut', qualit' se vellet inde acquietari, idem Thomas Walcott dicit, quod ipse non est inde culpabil', et inde de bono et malo pon' se super patriam. Ideo immediate ven', inde jur' &c. coram præfat' Justic' ult' nominat' hic, &c. et jur' jurat' illius per præfat' Vic' ad hoc impanellat, scil', &c. exact' vener', qui ad veritat' de præmiss' dicend' elect', triat', & jurat', dicunt super sacrament' suum, quod prædictus Tho' Walcott est culpabil' de alt' prodition' prædict' in indictament' prædict' specificat', ei superius imposit' modo & forma, prout per indictament' prædict' superius versus eam supponitur, & quod idem Thomas Walcott nulla habuit bona seu catalla, terras sive tenementa ad eorum notic'; et super hoc statim quæsit' est de præfat' Tho' Walcott, si quod pro se habeat vel dicere sciat, quare cur' dict' Domini Regis hic ad judicium et execution' de eo super veredict' prædict' procedere non debeat, qui nihil ulterius dicit præterquam ut prius dixerat, super quo visis, et per cur' hic plene intellectis omnibus et singulis præmissis, considerat' est per cur' hic, quod præd' Tho' Walcott ducatur ad gaolam dicti Domini Regis de Newgate, unde venit, et ibidem super bigam ponatur, et abinde usque ad furcas de Tyburn trahatur, et ibidem per collum suspendatur, et vivens ad terram prosternatur, et quod secreta membra ejus amputentur, et interiora sua extra ventrem suum capiantur, et in ignem ponantur, et ibidem comburantur, et quod caput ejus amputetur, quodque corpus ejus in quatuor partes dividatur, ill' ponantur ubi Dominus Rex ea

assignare voluit, &c. per quod præcept‘ fuit Vic‘, quod caperent * eum, si, &c. ad satisfaciend‘, &c. et modo, scil‘, die Jovis prox‘ post mensem Paschæ isto eodem termino, coram Domino Rege nunc apud Westm‘, ven‘ quidam Johannes Walcott, filius et hæres prædict‘ Thomæ Walcott defunct‘, de alta proditione prædict‘, convict‘ et attinct‘, per Benedict‘ Browne Attornat‘ suum, et habit‘ audit‘ record‘ prædict‘, super quo præd‘ Thomas convict‘ et attinct‘ existit, dicit, quod in record‘ et process‘ prædict‘, ac etiam in redditione judicii prædict‘ manifeste est errat‘ in hoc, vid‘, quod apparet per record‘ prædict‘, quod judicium reddit‘ est pro dicto Domino nuper Rege, ubi per leges hujus regni Angliæ judicium prædict‘ pro‘ dicto Thoma Walcott reddi debuisset, et in eo manifeste est errat‘. Erratum est etiam in hoc, viz. quod Crimina in et per indictamentum prædict‘ versus prædict‘ Thomam imposit‘, per leges hujus regni Angliæ inserte, dubie, et nimis generalit‘ allegat‘ existunt, quodque idem indictamentum supposuit, et eidem Thomæ onerat et imponit crimina diversimoda, et toto genere inter se discrepantia, quodque judicium superinde reddit‘, sit et existit contrarium legibus Angliæ, et minime pronunciand‘ vel imponend‘ pro vel super hujusmodi crimina, qual‘ in indictamento prædict‘ supponuntur, et in eo manifeste est errat‘, unde pet‘ judicium cur‘ hic in præmiss‘, et quod judic‘ et attinctur‘ prædict‘ ab error‘ prædict‘, et al‘ in recordo et process‘ prædict‘ compert‘ existent‘, reversetur, adnulletur, et penitus pro nullo habeatur, et quod ipse prædict‘ Johannes Walcott filius et hæres prædict‘ Thomæ, ad omnia quæ ipse præd‘ Johannes, occasione judicii et attinctur‘ prædict‘ amisit, restituatur, et quod cur‘ hic procedat ad examinationem tam record‘ et process‘ prædict‘, quam materiar‘ superius pro errore assign‘, &c. et quia cur‘ dicti Domini Regis hic de judicio suo de et super præmissis reddend‘ nondum advisatur, dies inde dat‘ est præfat‘ Johanni Walcott in statuto quo nunc, &c. in cro‘ sanctæ Trinitat‘, coram Domino Rege, ubicunque, &c. de judicio suo inde audiend‘, &c. ad quod quidem crast‘ sanctæ Trinitat, coram Domino Rege apud Westm‘ ven‘ prædictus Johannes Walcott per Attornat‘ suum prædict‘, et, ut prius, petit judicium, et quod judicium, et attinctur‘ prædict‘, versus prædict‘ Thomam Walcott reddit‘, ab error‘ prædict‘, et al‘ in recordo et process‘ prædict‘ compert‘ et existen‘, reversetur, adnulletur, et penitus pro nullo habeatur, et quod ipse prædict‘ Johannes Walcott, filius et hæres prædict‘ Thomæ, ad omnia quæ ipse idem Johannes, occasione judicii et attinctur‘ prædict‘ amisit, restituatur, et quod cur‘ hic procedat ad examination‘ tam record‘ et process‘ prædict‘, quam materiarum superius pro errore assign‘, &c. And after many continuances, it is entered thus: Super quo vis‘, et per cur‘ hic intellectis omnibus et singulis præmissis, diligenterque examinat‘ record‘ et process‘ prædict‘, et err‘ per prædict‘ Johannem Walcott superius assign‘, et al‘ in record‘ et process‘ prædict‘ compert‘ existen‘, maturaque deliberatione inde prius habita, considerat‘ est, quod judicium prædict‘ ab error‘ prædict‘, et al‘ in record‘ et process‘ prædict‘ compert‘ existen‘, revocetur, adnulletur, et penitus pro nullo habeatur, et quod prædict‘ Johannes Walcott, filius et hæres prædicti Thomæ Walcott, ad omnia quæ ipse occasione judicii et attinctur‘ prædict‘ amisit, restituatur, et quod prædict‘ Johannes Walcott eat inde sine die, &c. Et super hoc Johannes Trevor Miles, Attorn‘ Domini Regis nunc general‘, qui pro eodem Domino Rege in hac parte sequitur, coram Rege ac proceribus hujus regni Angliæ hoc prædicto parliamento apud Westm‘ in com‘ Middlesex assemblat‘, in propria persona sua ven‘ et dicit, quod in record‘ et process‘, ac etiam in redditione judicii super prædict‘ priori brevi dicti Domini Regis de errore corrigend‘, per prædict‘ Johannem Walcott prosecut‘ pro revocatione et adnullatione judicii prædict‘ versus prædict‘ Thomam Walcott, super indictamentum prædict‘, pro alta proditione prædict‘, reddit‘, manifeste est erratum in hoc, viz. quod ubi per recordum prædict‘ supponitur, quod prædict‘ Johannes Walcott posuit loco suo quendam Benedict‘ Browne Attornat‘ suum ad prosequend‘ prædict‘ primum breve de errore in et super indictament‘ prædict‘ pro alta proditione prædict‘, quod tamen Benedict‘ Browne nullum habuit warrant‘ Attorn‘ pro eodem Johanne Walcott de recordo affilat‘, ideo in eo manifeste est errat‘. Errat‘ est etiam in hoc, viz. quod per record‘ prædict‘ apparet quod judicium prædict‘ pro revocatione et adnullatione judicii prædict‘ versus prædict‘ Thomam Walcott, in forma præd‘ reddit‘, redditum fuit pro præd‘ Johanne Walcott versus dict‘ Dominum Regem, ubi per legem terræ hujus regni Angliæ judicium ill‘ reddi debuissent pro dicto Domino Rege versus eundem Johannem; ideo in eo scil‘ manifeste est errat‘, et hoc parat‘ est verificare, unde pet‘ judicium, et quod judic‘ ill‘ ab error‘ prædict‘, et al‘ in record‘ et process‘ prædict‘ existen‘, revocetur, adnulletur, et penitus pro nullo habeatur, et quod dictus Dominus Rex, ad quæ omnia ipse occasione revocation‘ et adnullation‘ judicii prædict‘ amisit, restituatur, &c.

It was argued on behalf of the king, that there was no warrant of attorney filed, and consequently the reversal was not regular; for default of an appearance by the heir, who prosecuted the Writ of Error; and that there was no day given to the attorney general; nor was the attorney general, or the patentee, a party to the record, nor any plea or answer made by either of them to the assignment of the errors.

To this it was answered, That by the common practice in the Crown-Office, no warrants of attorney are filed, neither for defendants upon indictments, nor for plaintiffs in the Writ of Error; that it had not been known, within

* Quære, whether this award is right.

the memory of any man living, that such warrants were ever filed: that there need no day to be given to the king, or the attorney general, for that the king's attorney was supposed always present in Court, and the king cannot be nonsuited, because he cannot be called. That there never was any answer to the assignment of errors in such cases; that in capital cases there needs no joining of issue upon pleading Not Guilty.

Then it was argued, that there was no error to warrant the reversal to the attainder; that the exception taken to the judgment was trivial and frivolous; that *ipso vivente* was not of necessity to be inserted; that never any judge was known to require that the man's bowels should be burnt while he was alive; that the same was impossible to be executed; that the law never appointed any judgment for treason as essential, besides drawing and hanging; and that quartering has been so long used, as to be accounted part of the judgment, yet it is not necessary to make a good judgment; and if that be so, no more is needful than drawing, hanging, and quartering; that ancient presidents were thus short; Rot' Parliament' 3 H. 5, p. 1, n. 6. Thomas de Gray et al. had been attainted of treason upon a special commission at Southampton, and the record of the attainder removed into parliament, 3 Hen. 5, and the judgment was good, Thomas de Gray 'ut proditor Domini Regis et Regni sui Angliæ, distrahatur suspendatur et decapitetur:' and in the records, Penes Thes. et Camar' Scacc' 3 Hen. 7, f. 10, a. it is 'detrahatur et suspendatur.' And many other there are in that place to the same effect, and in the same manner, Glanvil. lib. 3, cap. 13, et Fleta cap. 16. And there is the case of David prince of Wales, who was drawn, hanged, beheaded, dismembered and burnt, Britton de Treason, cap. 8, p. 16. Drawing and death is the punishment of treason, et des Appeles, c. 22, p. 43, to the same effect; et Lib. Assis 30 Edw. 3, pl. 19, and abundance of records were cited as found in the Exchequer, and nothing mentioned in them but 'detrahatur et suspend'. And then was cited Rot. Parl. 2 Hen. 6, n. 18, and the book 1 Hen. 6, 5. 19 Hen. 6, 103, and 1 H. 7, 24. Bro. Coron. 129, there is a judgment against Humfry Stafford 'per omnes Justiciar' Angliæ, quod 'iterum ducatur turri et abinde ponatur super 'herdillum et trahatur per London ad Tyburn, ibidem suspendatur et ante mortem 'corda scindantur et caput scindatur et corpus ejus dividatur in quatuor partes et 'mittentur ad voluntatem Domini Regis.' Earl of Essex's case, Moore's Rep. and Owen's case in 1 Roll's Rep. have not this inserted. And Stamford, who was a judge in 1 et 2 Phil. et Mar. says, c. 19, p. 183, only en son view: and Alexander Burnet, who was convicted of treason for taking Romish orders at the Old Bailey, 26 Car. 2, Rot. 56, had no such judgment; Corker's case for the like offence, 31 Car. 2, Rot. 239. William Marshall, 31 Car. 2, Rot. 240. And Mr. John Hampden had the like judgment as Burnet, &c. 1 Jac. 2, upon confessing an indictment of the same kind with Walcott's. Whereupon, considering that many presidents were without this, and that the essential parts of the punishment were in this judgment, it was prayed that the judgment of reversal might be reversed, and the attainder confirmed.

On the other side it was argued, That the original judgment was erroneous, and the reversal just. And first it was observed, That this Writ of Error was new and particular, *ex grave querela* of the countess of Roscommon, who had nothing to do with the record, was a mere stranger to it, and yet it is suggested that the reversal was to her damage.

Then it was urged that there was an error in the first judgment, for that the judgment, in case of Treason, is by the common law, and that it is and must be certain, and not at the pleasure of the Court which pronounces and gives it: that it ought to be severe, because it is a punishment for the greatest offence which can be committed, 'crimen lese majestatis,' a sin of the first magnitude, an offence which imports treachery to the prince, enmity to the country, defiance to all government, a design to overthrow and confound all order and property, and even the community itself; and in its consequence occasions the practice of all other crimes whatsoever, as murders, burglaries, robberies, &c. and therefore our constitution hath imposed upon it a severe and cruel judgment, such as the English do allow or permit in no other case; the greatest of other crimes incur death only; but for treason the judgment is different. Sir Tho. Smith's treatise de Republica Anglic. 198, there ought in reason to be a proportion between the offence and the punishment; and as this is the greatest, so the penalty is 'morte 'multo atrocior;' and in Fleta lib. 1, p. 21, it is 'cum aggravatione pene corporalis,' somewhat more than death. Then this being a common law punishment, and not prescribed by any statute, the knowledge of it must be fetched from our law-books, and from presidents; for the general practice of the realm, is the common law; it is described with an *ipso vivente*, in Smith's Republica Anglic. p. 28, lat. Edit. pag. 245. Stamf. 182, *en son view* which is tantamount; and Stamford wrote 2 Eliz. In Coke's 3 Inst. 210, it is 'ipsoque vivente comburentur, Pulton de Pace 'Regni,' 224, and many other books were cited to the same effect: and it was affirmed that there was no book, which recited the judgment at large, but had this particular in it. Several books do in short put it, that for treason the party shall be drawn and hanged and quartered, but those are only hints of the chief parts, not recitals of the judgment itself. In the English book of judgments, printed 1655, p. 292, it is mentioned particularly as the King's Bench have adjudged it should be. The duke of Buchingham's was so, 13 Hen. 8,

Stowe's Chronicle 515, shews that he was the person. Then it was said, they have been thus in every age without interruption, until 26 Car. 2. Humfrey Stafford's case, 1 H. 7, 24. which was 'per consensum omnium Justiciariorum,' though quoted on the other side as shortly stated in the year book; yet on the roll, which hath been seen and perused, it is with an *ipso vivente:* Plowden 387, and Rastal's Entries 645, the same case, is thus. Coke's Ent. 699, is so likewise: John Littleton in 43 Eliz. Coke's Ent. 422, 423, and 336, is so. In the lord Stafford's case, 33 Car. 2, by the direction of this house, and with the advice of all the judges, was the judgment so given by the earl of Nottingham then lord high-steward. In the lord Preston's case it is so, which was drawn by advice of the then attorney and solicitor, the present keeper and chief justice of the Common Pleas.

As to the objection, That 'vivens prosternatur' doth imply it, and that is enough. It was answered, That 'ipso vivente comburentur,' implies both, but not *e contra;* and all the presidents shew the latter to be requisite. And as to the case of David prince of Wales mentioned in Fleta, there is only a relation of what was the execution, not of what was the judgment. And Coke 2 Inst. 195, says, That the judgment was in parliament, and therefore the same can be no president to this purpose; and any one that runs over Cotton's records, will find the judgments in parliament to be different, as the nature of the case required. No argument can be drawn from the acts of the legislature to govern judiciary proceedings; however, John Hall's case 1 Hen. 4, Cott. 401, is as now contended for. Before the 1 Hen. 7, there were some erroneous attainders; and the 29 Eliz. takes notice of them as so erroneous. The judgments against Benson and sir Andrew Helsey (cited below) are plainly erroneous; they dispose of the quarters, which they ought not, but leave the same to the king's pleasure. Sir Andrew's president is a monstrous arbitrary command by writ to commissioners of Oyer and Terminer, ordering them to examine him, and to give judgment in manner as in the writ is directed, that therefore is not to be justified; and it was before 25 Edw 3, Henry Ropers 21 Rich. 2, doth dispose of the quarters, and hath other errors in it; and so have William Bathurst's and Henry South's, which were in 3 Hen. 4. But from that time to 26 Car. 2, there is none which do omit it. The four presidents at the Old Bailey were against Popish priests, and what private politic reasons or commands might occasion the omission, is unknown; and Hampden was not executed, but his judgment was upon a confession, and his life saved, the reason of which is also unknown: so that there have been none executed upon such erroneous judgments; and that there are no more presidents, with the omission, is a good argument, that those many which have this particular in them, are good and legal; the constant current having been this way, proves the same to be the common law. And this is the most severe part of the punishment, to have his bowels cut out while alive, and therefore not to be omitted. As to the earl of Essex's case in Moore, and Owen's case in Roll's Rep. the first is only a report of the case, and the last a descant upon the judgment, but neither do pretend to recite the whole judgment.

Then, to pretend that this judgment cannot be executed, is to arraign the wisdom and knowledge of all the judges and king's counsel in all reigns: and tradition saith that Harrison, one of the regicides, did mount himself, and give the executioner a box on the ear after his body was opened, &c.

Then it was argued, That if it be a necessary part of the judgment, and be omitted, it is a fatal error, and doth undoubtedly in all cases give a good reason for the reversal of such judgment, as in the common case of debt, where dampna are omitted in the judgment, though for the advantage of the defendant, as is Beecher's case, and Yelv. 107. Besides, if this be legal, then all those attainders, in which this particular is inserted, must be illegal; for it is impossible that both the judgments should be right; for either those are more severe than they should be, or this is more remiss. To say, that it is discretionary, is to give the judges a power, which they themselves have disclaimed; and to reverse this reversal, is to tell the Court of King's Bench, that they are not obliged to follow the general practice of their predecessors; that they are obliged to no form in their judgment for treason; that nothing but death, and being drawn to it, are essential; and according to that doctrine, a woman might receive the judgment of quartering, and a man might be burnt, and both according to law. But the constitution of this kingdom hath prescribed and fixed rules and forms, which the executive power is obliged and bound to follow; that as nothing can be made or construed to be an offence at the pleasure of the Court, so no judgment can be given for any known offence at pleasure. But the law, either statute or common, hath established what is an offence, and what is its punishment, and there is nothing of arbitrary power allowed in respect of either. Wherefore upon the whole it was prayed, that the reversal might be affirmed, and it was affirmed accordingly.

296. The Trial of WILLIAM HONE,* at the Old Bailey, for High Treason: 35 CHARLES II. A. D. 1683.

ON the 12th of July, 1683, William Hone being brought to the bar, and having held up his hand, the Indictment was read, as follows: "London. The jurors for our sovereign lord the king, upon their oaths, present, that William Hone, late of London, labourer, with other false traitors, as a false traitor against the most illustrious and excellent prince, our sovereign lord Charles II. by the grace of God, of England, Scotland, France and Ireland king, his natural lord; not having the fear of God in his heart; nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil; and the true duty, and natural obedience, which true and faithful subjects of our sovereign lord the king, towards him our said lord the king do bear, and of right ought to bear, wholly withdrawing; and with his whole strength intending the peace and common tranquillity of this kingdom of England to disturb, and war and rebellion against our said lord the king to move and stir up, and the government of our said lord the king within this kingdom of England to subvert, and our said lord the king from his title, honour and kingly name of the imperial crown of this his kingdom of England to put down and deprive, and our said lord the king to death and final destruction to bring and put, the 2nd day of March, in the year of the reign of our sovereign lord Charles II. king of England, &c. the five-and-thirtieth, and divers other days and times, as well before as after, at the parish of St. Michael Bassishaw, in the ward of Bassishaw, London, aforesaid, maliciously and traiterously, with divers other traitors, to the jurors aforesaid unknown, he did conspire, compass, imagine and intend our said lord the king, his supreme lord, not only of his kingly state, title, power and government of this his kingdom of England to deprive and throw down; but also our said lord the king to kill, and to death to bring and put; and the ancient government of this his kingdom of England to change, alter, and wholly to subvert, and a miserable slaughter amongst the subjects of our said lord the king through the whole kingdom of England to cause and procure, and insurrection and rebellion against our said lord the king to move, and stir up, within this kingdom of England; and to fulfil and perfect the said most horrible treasons, and traiterous compassings, imaginations, and purposes aforesaid, he the said William Hone, and many other traitors, as a false traitor, then and there, and divers other days and times, as well before as after, maliciously, traiterously and advisedly, he did assemble, meet together, and consult with divers other evil-disposed and discontented subjects of our said lord the king, to the jurors as yet unknown, and had discourse, and did treat, of and for the executing and fulfilling their treasons, and traiterous compassings, imaginations and purposes aforesaid; and that the said William Hone, (together with many other traitors) as a false traitor, maliciously, traiterously, and advisedly, then and there, and divers other days and times, as well before as after, did take upon himself, and promise to be aiding and assisting in the executing of the treasons, and traiterous compassings, imaginations and purposes aforesaid; and in providing of arms, and men armed, to fulfil and perfect the said treasons, traiterous compassings, imaginations and purposes aforesaid. And to fulfil, and bring to pass, the said most horrid treasons, and traiterous compassings, imaginations and purposes aforesaid, he the said William Hone (with many other false traitors) as a false traitor, maliciously, traiterously and advisedly, then and there, did procure and prepare arms, to wit, blunderbusses, carbines, and pistols, against the duty of his allegiance, against the peace of our sovereign lord the king, &c. and against the form of the statutes," &c.

Cl. of the Cr. How sayest thou, William Hone? Art thou guilty of this high treason, whereof thou standest indicted, or not guilty?

Hone. In some measure I am guilty.

Capt. *Richardson.* You must say, guilty, or not guilty.

L. C. J. Sir Francis Pemberton. You must plead to this; and the way is, to confess all, or deny all.—*Hone.* I know nothing of the arms.

L. C. J. Are you guilty of the treason, in conspiring the death of the king, and providing arms for that purpose?

Hone. I never provided arms; I am guilty of the conspiracy.

L. C. J. We can take notice of none of these odd kind of words you talk of, but either plainly guilty, or not guilty.

Hone. My lord, I can truly say, I am not guilty, for I know nothing of it.

L. C. J. If you say so, you say as much as is required of you at present.

Hone. In that understanding of it, I am not guilty.

L. C. J. Well, he says he is not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Hone. By God and my country.

Cl. of Cr. God send thee a good deliverance.

Friday, July the 13th in the morning, the court being set, and proclamation made.

Attorney General. Sir Robert Sawyer. Set William Hone to the bar.

Cl. of Cr. You the prisoner at the bar, hold up your hand.

* See the Note at the beginning of Walcot's Case, p. 521, of this Volume.

Hone. I desire I may retract my plea: I would plead guilty.

L. C. J. Do you confess the indictment.

Hone. Yes, my lord.

L. C. J. That is, that you did conspire the death of the king, and in order to that, that you did provide yourself with arms to do this wicked act.

Hone. I never did that, my lord, I never provided any arms.

L. C. J. What were you to have done?

Hone. That deposition I gave before sir William Turner is true.

L. C. J. Tell us what you were to have done in this bloody matter.

Hone. I was asked by one Mr. Richard Goodenough to go along with him, and I asked him whither, and he would not tell me; but I understood it was to kill the king and duke of York, but he did not tell me the place.

Serj. *Jefferies*. He does not confess fully; we desire to try him.

L. C. J. Look you, you have pleaded not guilty to this Indictment; The king is willing, that if you be not guilty, you shall not be condemned; and therefore he does desire and command the evidence against you should be publicly given, that all persons may see, that you are not without cause brought to trial. Therefore swear the Jury.

The prisoner challenged none; but the Jury that were sworn were, Nicholas Charlton, Christopher Pitts, Robert Beddingfield, John Pelling, William Windbury, Thomas Seaton, William Rutland, Thomas Short, Theophilus Man, John Genew, John Short, Thomas Nicholas.

Then proclamation for information, and for those that were bound by recognizance to appear, was made.

Cl. of Cr. William Hone, hold up thy hand. (Which he did.) You gentlemen of the jury that are sworn, look upon the prisoner, and hearken to his cause; he stands indicted by the name of William Hone, &c. *prout antea*, in the Indictment, *mutatis mutandis*; upon this indictment he hath been arraigned, and hath thereunto pleaded Not Guilty; and for his trial, &c.

Mr. *Jones*. May it please your lordship, and you, gentlemen of the jury, the prisoner stands indicted for the most horrid treason that ever was endeavoured to be committed in this kingdom, for traitorously conspiring to kill the king, and consulting how and in what manner it should be done, and for preparing arms for the doing of it. We shall prove this to you, and then I hope you will find him guilty.

Att. Gen. May it please your lordship, and you, gentlemen of the jury, the part the prisoner at the bar was to act in this treason, was the killing of the king: he was one of the persons that were to be assisting in assassinating the king's person. We will not trouble you with the large evidence of the rising, as we did yesterday; but we will prove these things upon him, that he undertook to do it, that he was concerned with the rest of the confederates; We shall shew you this is not a new thing, but he hath been an old rebel; for this hath not been a new project, but hath been acting several years. Five years ago, when the king attended my lord mayor's show, he undertook to kill him off of Bow church. We shall call our witnesses, and prove it fully upon him. Mr. Keeling, and Mr. West.

Mr. *Josias Keeling* sworn.

Att. Gen. Do you tell my lord and the jury, what you know of this prisoner at the bar.

Keeling. The first time I saw him was at the Dolphin tavern, when the arms were agreed upon, he was there then.

Att. Gen. Who was there then?

Keeling. Mr. West, Mr. Goodenough, and him I remember particularly, and some others, whom I do not at present remember, and since that he hath taken notice of me.

Att. Gen. Was Mr. Rumbold there at that time?—*Keeling*. Yes.

Att. Gen. Pray at that meeting tell the jury what discourse you had; for many of these gentlemen are not the same that were on the jury yesterday.

Keeling. It was discoursed then of the king's coming home from Newmarket the Saturday after the fire. Mr. West told Mr. Rumbold, he heard the king would come home that day; but, says he, I do not believe it. Says Rumbold, I hear he will come home on . Says Mr. West, I hear so too. They said, they hoped they would not come home on Monday. Says Mr. West to Mr. Rumbold then, How many Swan-quills, Goose-quills, and Crow-quills, and how much sand and ink, must we have? I think the prisoner at the bar must needs remember it as well as I. It was agreed by Mr. Rumbold. I think I am exact in the number, and he was by and heard all the discourse.

Att. Gen. What did they mean by this?

Keeling. By swan quills they meant blunderbusses; by goose-quills, musquets; and by crow-quills, pistols; and by sand and ink, powder and bullet. He took acquaintance with me after that meeting, (for I never saw him, as I know of, before) and after some time he told me, he was one of them that was to go down to the Rye to assassinate the king. And since that, at a coffee-house in Swithin's-alley, he told me, it would never be well till the Blackbird and the Goldfinch were knocked on the head. They being terms I did not understand, I asked him what he meant; he said the king and duke of York.

Serj. *Jeff.* You are sure that is the man?

Keeling. I am sure that is the man, William Hone.

Serj. *Jeff.* What, is that the man that talked of the Blackbird and Goldfinch?

Keeling. I am sure that is the man.

Att. Gen. Now swear Mr. West.

Serj. *Jeff.* If Mr. Hone has a mind to ask him any questions, he may.

Hone. My lord, this I deny: As to the Blackbird, I own it; as to the Goldfinch, I never heard a word of it till this time.

Serj. *Jeff.* You had only a design upon the Blackbird then?

Mr. *West* sworn.

Att Gen. Tell the court what you know of the meeting at the Dolphin tavern.

West. I was there, and Mr. Keeling came in. There were several things said of swan quills, goose-quills, and crow-quills, but this man did not come in till the discourse was over, and I am sure I did not speak of any thing of this nature before this man in my life. But Mr. Goodenough did undertake to provide the men, and Mr Goodenough said, he would try him, if he would make an attempt upon the duke without the king. And I asked him, whether he had seen Mr. Goodenough. He told me he had. Says he, he spoke to me about a little job for the duke. Mr. Goodenough said, he had spoke to him fully about the thing. And I saw him often in the company of Mannius, that was designed to be another of the assassinates. He was at my chamber once; says he, master, shall we do nothing? I think he used these words, That if the duke of Monmouth would be true, and appear, he could bring 50 or 60 honest men of the other side the water, to do the business, I asked him, What business? Says he, either a brisk push (that I took for an insurrection) for the two brothers: Says I, what brothers do you mean? Says he, the captain and lieutenant; those were the two terms they used since the Van-herring was printed. I think he was a pretty honest fellow before this time; he was deluded by Goodenough, I think, in the thing.

L. C. J. (To Mr. West.) Do you come to justify these things?

West. My lord, he hath been deluded basely, and I am sorry for the poor fellow.

L. C. J. It is a very unusual thing, for one in your condition to use such expressions in such a case.

Serj. *Jeff.* Mr. West, you have been deluded.

Att. Gen. Captain Richardson and sir Nicolas Butler.

Serj. *Jeff.* I find he is not worthy of the mercy the king hath shewed him.

West. It was a word I put from me unawares.

Serj. *Jeff.* My lord, we will give you an account of a design this man had long ago to kill the king.

Sir *Nicolas Butler* sworn.

Sir *N. Butler.* My lord, I know the prisoner at the bar very well. I have known him many years: I have always known him guilty of plotting and contriving, and ready upon all occasions to embrace any thing for these purposes laid to his charge; particularly, when sir Francis Chaplain was lord mayor, his majesty and the duke stood at Mr. Waldoe's house, by reason of the Angel House being shaken; and he came to my house, and told me, he would discourse me upon some private matter; I called him into a closet, and he told me, they had a fair opportunity to take off the king and the duke at once: I told him, that would do very well, but how will you do it? Says he, we will do it with cross-bows; we are to be half a dozen, and we will go into the steeple, where there is a window just opposite to the balcony: and a great deal of discourse we had to this purpose. My intent was to divert them from this design, and told him how impossible it was they should escape the foot guards and horse guards, and multitude of people: and if he did not do the business effectually, he would be undone, and all the party. I rested satisfied he would have desisted upon this. But I knew the principles of these fifth-monarchy-men, and their associates, and thought it not safe to trust to his bare say-so, that he would desist; but I went to the king and the duke of York, into my lord chamberlain's chamber, where they came to me, and I gave them this account, and desired them to set some to watch the place, and to search if any were got into the steeple before they came; and there was one Horsal appointed, that did accordingly watch them, but none came: upon which some good willers to it have reported, that it was a sham business; but I think that was not well done. But the thing was real, and when he was examined before the king in the secretary's office, he did confess all these things that I charged him with.

Att. Gen. Had you any discourse of killing the king at this time?

Sir *N. Butler.* No: At last they did understand I kept a correspondence at court, and then they would tell me no more.

Att. Gen. Since he was taken, what did he say about this matter?

Sir *N. Butler.* About this matter he did acquaint divers; he was one that was to kill the king and the duke.

Captain *Richardson* sworn.

Capt. *Richardson.* Sir Nicolas Butler asked him in my presence (I went along with sir Nicolas when he examined him) as to this thing, how he was concerned? He said, Mr. Goodenough came to him, and told him he wanted labourers; he asked him, for what? At last he did confess, that Mr. Goodenough did tell him, it was to kill the king, and the duke of York; he did confess, that he did agree to it, and that he would be one of them. He did likewise say, that after, at another meeting, he was for killing the king and saving the duke; but Goodenough was for both.

Sir *N. Butler.* He said he was to have 20*l.*

Capt. *Richardson.* He said, he did not desire to stir, and Goodenough told him he should have 20*l.* to buy him horse and armour;

and told us the business of the Rye, the place he did not know, but said, it was the place where the king was to be murdered. This is the substance of the examination taken.

Serj. *Jeff.* Though the prisoner at the bar did partly make a confession; yet for the satisfaction of the world, my lord gave us leave to call our witnesses.

Capt. *Richardson.* That which sir Nicolas says about the cross-bows he did own, but——

L. C. J. What say you to this treasonable design of your's, in undertaking to kill the king, in hiring yourself out to be one of the persons that should have executed this traiterous design, this horrid murder, to have killed the king at the Rye?

Hone. I say, I did not know the place where, nor when, at the time it was proposed about the Rye.

L. C. J. But what do you say as to the undertaking to kill the king? The other is but a circumstance, this is the material point.

Hone. My lord, I was drawn into it by Mr. Richard Goodenough.

L. C. J. You hear what sir Nicolas Butler says of the cross-bows you designed to kill the king with, what say you to that?

Hone. I say, there was a person told me of such a thing; and I told sir Nicolas immediately of it. The person that told me was a shop-keeper, and I don't know him.

Sir *N. Butler.* You named three persons to the king that were confederates with you, but you came to me of yourself.

L. C. J. Look you, you yourself was one of the wicked undertakers in that traiterous design.

Hone. No, I did never design it, but I was told it.

L. C. J. Ay, that yourself and some other good fellows were engaged in the design.

Hone. I was not engaged, only as I was told by a fellow, that there was a shop-keeper lived hard by that would do such a thing, and I immediately told sir Nicolas Butler.

L. C. J. Come, it is in vain for you to mince the matter, for here is a full evidence against you. The best you can do for your advantage now, is to consider well with yourself, and repent of this wicked design. What religion do you profess?—*Hone.* Religion, my lord?

L. C. J. Ay, any or none?

Hone. My lord, I hear several sort of men, sometimes Baptists, sometimes Independents, and sometimes the Presbyterians.

L. C. J. But regard none. Look you, gentlemen of the Jury, you hear a plain case of a barbarous murder designed upon the king, one of the horridest treasons that hath been heard of in the world, to have shot the king and the duke of York in their coaches, as they were coming upon the road. You have had full evidence of this man's being one of them; and therefore I am of opinion, that you must find him Guilty.

So the Jury brought the prisoner in Guilty, without going out of Court.

See an Account of his Execution at the end of Lord Russell's Case.

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297. The Trial of WILLIAM Lord RUSSELL,* at the Old Bailey, for High Treason: 35 CHARLES II. A.D. 1683.

THE lord Russell was set to the bar, and placed within the bar.

Clerk of the Crown. William Russell,† hold up thy hand (which he did) Then the indictment was read as followeth:

"London. The jurors of our sovereign lord

* See the Note to the beginning of Walcot's Case, p. 521, of this volume. Dalrymple, in repeating from Burnet (whom he so much depreciates, see the Note to vol. 8, p. 134, 136) the anecdote of the observation, which lord Russell felt an inclination to make to sheriff Rich, falsifies the sentiment expressed by Russell, and represents him as checking himself from the recollection that Rich might feel pain, instead of from reflecting upon the indecency of being merry at such a season. See other instances of Dalrymple's habitual misrepresentations in a Note to the Case of lady Lisle, A. D. 1685. See, too, his own Preface to his Memoirs, in which he says, "From comparing the notes which I took in France, with the copies of the papers sent me from thence, I find, in some instances, a difference in the dates between us, owing probably to my oversight;" adding, however, "but in all other respects, the copies agree with the notes." Sir John, after 'marring in the telling,' (with his 'great he, but greater she,' see Boswell's Johnson) the plain distressful tale of Russell's final separation from his family, improves upon it, by relating how 'she lost her eye-sight by continual weeping in private.' On what authority he says this, or that she called often for death, I know not. It appears that for a disorder in her eyes, lady Russell was successfully couched on June 27th, 1694. (See Birch's Life of Tillotson, as quoted in a Note to p. 561, of Lady Russell's Letters, ed. of 1792). I have been informed by a very learned, skilful, and experienced physiologist, that a cataract (which seems to have been the malady of lady Russell's eyes) is by no means likely to be produced by weeping. As to the imputations on Russell in respect of connections with France, see Algernon Sidney's Case (in this same year) in this Collection.

† He was lord only by courtesy, as being eldest son to the earl of Bedford.

'the king, upon their oaths, present, That 'William Russell, late of London, esq. together 'with other false traitors, as a false traitor 'against the most illustrious and excellent 'prince, our sovereign lord Charles 2, by the 'grace of God, of England, Scotland, France 'and Ireland, king, his natural lord; not hav-'ing the fear of God in his heart, nor weighing 'the duty of his allegiance, but being moved 'and seduced by the instigation of the Devil; 'and the true duty, and natural obedience, which 'true and faithful subjects of our sovereign lord 'the king, towards him our said lord the king, 'do bear, and of right ought to bear, wholly 'withdrawing; and with his whole strength 'intending the peace and common tranquillity 'of this kingdom of England to disturb, and 'war and rebellion against our said lord the 'king to move and stir up, and the government 'of our said lord the king within this kingdom 'of England to subvert, and our said lord the 'king from his title, honour and kingly name 'of the imperial crown of this his kingdom of 'England to put down and deprive, and our 'said lord the king to death and final destruc-'tion to bring and put, the second day of No-'vember, in the year of the reign of our so-'vereign lord Charles 2, king of England, &c. 'the 34th, and divers other days and times, as 'well before as after, at the parish of St. Mi-'chael Bassishaw, in the ward of Bassishaw, 'London, aforesaid, maliciously and traiter-'ously, with divers other traitors, to the jurors 'aforesaid unknown, he did conspire, compass, 'imagine and intend our said lord the king, 'his supreme lord, not only of his kingly state, 'title, power and government of this his king-'dom of England to deprive and throw down; 'but also our said lord the king to kill, and to 'death to bring and put; and the ancient go-'vernment of this his kingdom of England to 'change, alter and wholly to subvert, and a 'miserable slaughter amongst the subjects of 'our said lord the king through his whole 'kingdom of England to cause and procure, 'and insurrection and rebellion against our 'said lord the king to move, procure, and stir 'up, within this kingdom of England; and to 'fulfil and perfect the said most horrible trea-'sons, and traiterous compassings, imagina-'tions and purposes aforesaid, he the said Wm. 'Russel, together with other false traitors, as 'a false traitor, then and there, and divers 'other days and times, as well before as after, 'maliciously, traiterously and advisedly, be-'tween themselves, and with divers other 'traitors, to the jurors aforesaid unknown, 'they did meet together, consult, agree and 'conclude, and every of them, then and there, 'did consult, agree, and conclude, insurrection 'and rebellion against our sovereign lord the 'king, within this kingdom of England, to 'move and stir up, and the Guards for the 'preservation of the person of our said lord 'the king, to seize and destroy against the 'duty of his allegiance, against the peace, &c. 'and also against the form of the statutes, &c.'

Cl. of the Cr. How sayest thou? Art thou Guilty, or Not Guilty?

Lord *Russell.* My lord, may I not have a copy of the matter of fact laid against me, that I may know what to answer to it?

L. C. J. (sir Francis Pemberton*) My lord,

* Mr. Serjeant Runnington, in the Life of Lord Hale, which he has prefixed to his edition (published in the year 1779), of Hale's History of the Common Law, speaking of the corruption of the channels of public justice in the latter part of Charles the Second's reign, says, "In the year 1683, on the trial of lord Russell, Jefferies in his speech to the jury, turned the untimely fate of Essex into a proof of the conspiracy in which he and Russell had been engaged. Pemberton, who presided as chief justice, behaved to the prisoner with a candour and decorum seldom found in the judges of that reign or the succeeding one. But before Sidney was brought to his trial, Pemberton was removed from the head of the King's-bench and even from the privy council, and Jefferies put in his place, in order, by the fierceness of his manners, to cope with a man the vigour of whose spirit was known throughout Europe." In giving this account, the learned serjeant seems to have been misled by two passages in sir John Dalrymple's Memoirs, (part 1, book 1, pp. 31 and 34, 4to ed. of 1771) with which it agrees almost word for word. But, indeed, sir John Dalrymple, notwithstanding his attack upon the authenticity of Burnet, (see a Note to Seymour's Case, vol. 8, pp. 134, 136, of this Collection) is a very unsafe guide as to facts, dates, speeches, sentiments, or any other matter. (See the Note to Mitchell's Case, vol. 6, p. 1222, of this Collection, and the other passages referred to in the Note to Seymour's Case just mentioned: other instances of his want of exactness are noticed in this report of the proceedings against lord Russell, and in the Cases of Sidney, A. D. 1683, of lady Lisle, A. D. 1685, and of the Seven Bishops, A. D. 1688, in this Collection). Pemberton, (see Burnet's account of him in a Note, vol. 8, p. 245, of this Collection), was not chief justice of the King's-bench when he tried lord Russell, nor was he succeeded in the office of chief justice of the King's-bench by Jefferies, nor was the predecessor of Jefferies in that office removed, otherwise than by the act of God; nor was Pemberton removed from the privy-council before the trial of Sidney. Pemberton was made a justice of B. R. in the beginning of Easter Term, 31 Car. 2, A. D. 1679. (See 2 Show. 39). He was displaced from that office after Hil. Term in the next year, and returned to his practice at the bar, (2 Show. 94). In Easter week of the following year, he was appointed chief justice of the King's-bench, (2 Show. 155), from which office he was, in the vacation after Mich. Term, 1682, removed to the place of chief justice of the Common Pleas, (2 Show. 252), and he was put out of that office in the vacation after

we can grant you nothing till you have pleaded: Therefore that which is put to you now is, Whether you say you are Guilty, or Not-Guilty?

Ld. *Russell.* My lord, I am Not Guilty.

Cl. of Cr. Culprit, how wilt thou be tried?

Ld. *Russell.* By God and my country.

Cl. of Cr. God send thee a good deliverance.

Ld. *Russell.* My lord, I thought a prisoner had never been arraigned and tried at the same time. I have been a close prisoner.

L. C. J. For crimes of this nature, my lord, we do it continually.

Ld. *Russell.* It is hard, my lord.

Attorney General (sir Robert Sawyer). My lord hath no reason to complain for want of notice; for since Monday se'nnight he had notice of his trial, and the matters alleged against him he had notice of; for questions were put to him about this matter: he hath been very fairly dealt with, he hath had the liberty of counsel to advise him; there hath been no sort of liberty denied him, which becomes any subject to have in this condition.

L. C. J. My lord, I do not know whether you hear Mr. Attorney: he says, your lordship hath had a great deal of favour shewn you already, in that you have been acquainted with the crimes for which you are now indicted, that you have had a great deal of warning given you, that you have had the liberty of counsel, which hath not been known granted to any under your lordship's circumstances. He says, he doubts not but your lordship is prepared for your defence, because you have had so much knowledge, and warning of the time and matter for which you were to be called in question.

Ld. *Russell.* My lord, I am much to seek; I only heard some general questions, and I have witnesses that I believe are not yet in town, nor will be, I believe, till night. I think it very hard I can't have one day more.

Att. Gen. Monday se'ennight your lordship had notice.

Ld. *Russell.* I did not know the matter I was charged with.

Att. Gen. Yes, certainly; for I was with you myself, my lord; and those questions you were examined upon, were a favour to you, that you might know what the matter was you were accused of.

L. C. J. My lord, without the king's consent, we can't put off the trial: if the king's counsel think not fit to put it off, we can't grant your lordship's request in this case.

Ld. *Russell.* I would desire a copy of the panel of the jury, that I might consider of it; for how else can I make any just challenge? I thought the law had been very favourable to men upon their lives; and therefore it had allowed people to have some little notice.

L. C. J. Hath not your lordship had a copy of the panel? I think your lordship was allowed one. We gave order your lordship should have a copy of the panel.

Att. Gen. We did indulge him so far, that he might have a note of all the men returned.

Ld. *Russell.* I never had a copy of the panel.

L. C. J. It was the fault of your lordship's servants then; for I gave order for it myself. It is such a favour, that in regard a man's life lies at stake, we never did deny it*, to my knowledge. And therefore in this case I gave order to the secondary to deliver a copy. I know the king did not design to be hard upon my lord in his trial, but that he should have as fair a trial as ever any noble person had.

Ld. *Russell.* I pray I may have a copy then.

Serj. *Jefferies.* If my lord had sent his agents, and it had been refused, there had been something in it.

Att. Gen. Secondary Normansel was with me, and I gave him my allowance, though it was not his right.

L. C. J. That my lord may not be surprised, what think you of giving my lord time till the afternoon, and try some of the rest in the mean time?

Att. Gen. Truly, my lord, if I could imagine it were possible for my lord to have any witnesses, I should not be against it.

Ld. *Russell.* It is very hard.

Att. Gen. Do not say so; the king does not deal hardly with you; but I am afraid it will appear you would have dealt more hardly with the king: you would not have given the king an hour's notice for saving his life.

Secondary *Trotman.* I gave my brother Normansel a copy of the panel on my side, and hear that my brother Normansel hath said that he delivered a copy.

Then Secondary *Normansel* was sent for, and the court staid for him some time.

Trinity Term, 1683, (2 Show. 311), shortly after the trial of lord Russell. He was removed from the privy council on the 21th of October following, as appears by an entry which I have myself seen in the council books. When Pemberton was removed from the chief justiceship of the King's-bench, he was succeeded in that office by Saunders, who held it till his death, on the 19th of June, 1683, whereupon Jefferies was appointed to it: (2 Show. 308, 311). Roger North, Examen, ch. 5, s. 140, p. 403), goes beyond Dalrymple in commendation of the proceedings in Russell's trial. He says, "I shall only affirm in general, that neither in England nor any other country in the world, had ever any person under a capital charge of treason against the government a more indulgent (not to say strictly a juster) trial for his life than my lord Russell had." Other historians speak somewhat differently. Every reader will judge for himself.

* "But it had been denied in Colledge's case; and was afterwards denied to Mr. Cornish, till the time of his trial, when it could be of no service to him." Note in former Edition.

Mr. *Atwood.* My lord, a gentleman told me, he did not know whether it was fit, till he had consulted the Attorney General; afterwards I had a copy as it stood then, not as it is now.

Att. Gen. I desire my lord may be asked, who he sent for it?

Ld. *Russell.* I did not send for it; I inquired and they said it would be refused.

Atwood. No, the gentleman had it with the fair periwig.

L. C. J. It was delivered to your servant or agent. What did you do with it?

Ld. *Russell's Gent.* Sir, the gentleman gave me out of a book some names.

Serj. *Jefferies.* What did you do with them?

Ld. *Russell's Gent.* I writ them down; they were not perfect; I did not know what they were.

L. C. J. Sir, you were to blame not to deliver it to my lord.

Ld. *Russell's Gent.* I was not bound to deliver an imperfect thing to my lord.

L. C. J. Sir, you should have consulted your lord's advantage, so as to have delivered any thing for his good.

Ld. *Russell's Gent.* My lord was in the Tower, I was not admitted to my lord.

Att. Gen. Did you give it to my lady?

Ld. *Russel's Gent.* Yes, those names I had my lady had.

Serj. *Jefferies.* How long ago was it?

Mr. *Atwood.* Tuesday or Wednesday last.

L. C. J. (To lord Russell's servant.) Look you, Sir, when had you this?

Ld. *Russell.* I had no panel, I will assure you, delivered me; I had some names of people that they said were usually on juries.

L. C. J. They were the names of the jury.

Ld. *Russell.* They were only the names of them that were like to be of the jury; no other panel came to me.

L. C. J. My lord, there can be no other copy given, but the same that was delivered; for your lordship does know in this case, any person accused as your lordship is, may challenge thirty five; and therefore there is a return generally of three or fourscore, and these are returned in case of your lordship's challenge. When you have challenged so many as you please, then the twelve men that stand after your challenge are to be of the jury. And therefore this is not like a panel made up by the sheriff in ordinary causes, between man and man; there they make a formal panel, from which they cannot depart, when that is once returned; but here in criminal cases, because of the challenge, they return either sixty or eighty; and I presume your lordship was attended with the names delivered?

Serj. *Jefferies.* How many names were delivered?

Mr. *Atwood.* Above a hundred.

Ld. *Russell.* I had nothing of a panel delivered to me, but some names.

L. C. J. There never was any formal panel delivered to any person accused: the copy of it is in paper always.

Ld. *Russell.* How can I know who to challenge.

L. C. J. My lord, the copy of it is in your hands; your lordship hath been deceived in this, by not understanding the true nature of these things. If we were to give you a new one, we could give you but such an one.

Ld. *Russell.* I had no paper from the true officer.

L. C. J. No, but from your servant.

Att. Gen. My lord, you will have cause to complain, if they are not the same men we now shall call.

L. C. J. My lord, that paper will guide your lordship in your challenges.

Ld. *Russell.* My lord, I did not mind it: I put it away. My lord, with your favour, I must needs insist upon having a panel, and that you will put it off till the afternoon; I have a witness that is not in town. My counsel told me it was never done, or very seldom, arraigning and trying at the same time, except in case of common malefactors.

L. C. J. Mr. Attorney, why may not this trial be respited till the afternoon?

Att. Gen. Pray call the jury.

L. C. J. My lord, the king's counsel think it not reasonable to put off the trial longer, and we cannot put it off without their consent in this case.

Ld. *Russell.* My lord, it is hard: I thought the law had allowed a pretty deal of favour to a man when he came upon his life. How can I know to except against men that I never heard or saw one of them?

Cl. of Cr. You the prisoner at the bar, those good men that have been now called, and here appear, are to pass between you and our sovereign lord the king, upon your life or death; if you challenge any of them, you must speak as they come to the book to be sworn, before they are sworn.

Ld. *Russell.* My lord, may I not have the use of pen, ink and paper?

Court. Yes, my lord.

Ld. *Russell.* My lord, may I not make use of any papers I have?

L. C. J. Yes, by all means.

Ld. *Russell.* May I have somebody write to help my memory?

Att. Gen. Yes, a servant.*

L. C. J. Any of your servants shall assist you in writing any thing you please for you.

Ld. *Russell.* My wife is here, my lord, to do it.†

* "In order," Dalrymple informs us, "to prevent him from getting the aid of counsel."

† "I ask none" [no hand] "but that of the lady who sits by me." Dalrymple.

Whoever will read sir J. Dalrymple's account of this Case of lord Russell, and compare it with the original authorities, will be satisfied that very little reliance can, in any case, be safely placed on the representations of that writer. It must, however, be admitted that he seems frequently to distort and pervert his materials with

L. C. J. If my lady please to give herself the trouble.

Att. Gen. My lord, you may have two persons to write for you, if you please.

Ld. *Russell.* My lord, here hath been a name read, that I never saw in the list of the jury I had: I heard sir Andrew Foster called.

L.C. J. He is not called to be of the jury.

Cl. of Cr. Call John Martin. [He appears.]

Ld. *Russell.* Are you a freeholder of 40s. a year? I hope none are allowed in the panel, but those that have freeholds.

L. C. J. There is no panel made in London by freeholders; we have very few freeholders capable of being impannelled, because the estates of the city belong much to the nobility and gentlemen that live abroad and to corporations: therefore in the city of London* the challenge of freeholders is excepted.

Ld. *Russell.* My lord, I thought it had been always so, and the law had been clear in that case throughout England, that no man ought to be tried for his life, but by those that have freeholds. My lord, I remember I read a statute of 2 H. 5, where it is positive, that no persons shall be judged in case of life and death, but by those that have 40*s.* a year.

L. C. J. My lord, that statute extends not to this case. Read the statute.

Cl. of Cr. "Whereas perjury is much used in the city of London, upon persons, &c.†"

L. C. J. Is this the statute your lordship has read?

Ld. *Russell.* This is not in the case of life and death.

L. C. J. It is not, my lord.

Ld. *Russell.* That that I read is positive. And if your lordship will not allow of it, I desire my counsel may come and argue it; for it is a matter of law, and I cannot argue it, Whether the jury are not to be freeholders?

Serj. *Jefferies.* There is nothing mentioned in that statute with relation to the city of London indeed; but the necessity of the thing requires it.

Att. Gen. It will not be material; it is a collateral point; for most of the jury have freeholds.

L C. J. Do you allow the exception?

Att. Gen. No, my lord.

L. C. J. Therefore we must, if my lord stand upon it, hear his counsel. My lord, we will hear your counsel: what counsel do you desire, my lord?

Ld. *Russel.* The counsel that were allotted me.

L. C. J. No, you must have counsel assigned by us. The counsel that was assigned elsewhere signifies nothing.

Ld. *Russell.* Mr. Pollexfen, Mr. Holt, and Mr. Ward.

The said persons were called, and came into court.

L. C. J. (To the counsel.) Gentlemen, my lord here desires counsel; you are here assigned as counsel for my lord Russell, that is at the bar, it is concerning a thing wherein he doubts the law; he would except to the jury upon this account, to the poll because they have not freehold within the city of London; and he desires you may be assigned his counsel to make it out, that this is a cause of challenge.

Att.Gen. It is a case of treason, Mr. Pollexfen.—Mr. *Ward.* We take it so.

Mr. *Pollexfen.* My lord, perhaps if we had more consideration of it, we should speak more; but if your lordship pleases to hear us what we can say: first, we take it, with submission, at common law, a freehold was necessary to make a man a jury-man. But that which falls out in this case, is the statute of 2 H. 5, c. 3, which statute, I suppose, is here in court. That statute says this, (if you please, I will quote the substance of it) That none shall be admitted to pass upon any inquest upon the trial of the death of a man, except he have lands and tenements of the yearly value of 40s. Now we are here, I think, within the words of the statute, and I take it to be no question at all, were we not in a city and county. I think this would be no question upon any trial in any county at large. The statute does not make any exception or distinguishment between cities and counties at large; but the words are general, as I have opened them. My lord, the statute does also provide in cases of freehold or forty marks. Now, my lord, to prove this statute extends to London, though a city and county, there are other statutes that have been made subsequent, make it plain that it does so extend. But before I speak to them, there is 1 Inst. fo. 157, that takes notice of this statute, and speaks it generally, that the freehold ought to be in the same county, nor do I remember to have seen any book that distinguishes between counties at large, and cities and counties. But statutes that have been made concerning cities and counties are a plain declaration, that this is meant of juries both in cities and counties. I will mention the statute 7 H. 7, c. 5. The substance of the statute is this: it takes notice, that there were challenges in London, for that they had not 40*s.* per ann. and that this challenge was to be made in the wards, which are the same with hundreds in the counties; so this statute is made to take away the challenge

no more mischievous purpose than that of eking out wretched rhapsodies, which his vitious taste and confused imagination probably contemplated as sublime and impressive historical delineations. But see the case of Rumbold, A. D. 1685, in this Collection.

* "But the Resolution of the court extended to all trials, even in a county at large, and was so cited and followed in colonel Sidney's Case." Note in former Edition.

† Respecting the complaints antiently made against the partiality of London Jurors, see some particulars in Barrington's Observation on Stat. 11. H. 7. c. 21.

of 40s. freehold. This statute of 7 H. 7, that takes away the challenge in London, for not having 40s. is, with submission, a strong evidence and authority that it was before that time a good challenge; for otherwise to what end should they make a statute to take away the challenge, unless it were before a good cause of challenge? In the next place, 4 H. 8, c. 3, that extends to civil causes in London, and says, that the London jurors shall (but provides only for London in civil causes) be admitted in civil causes, that have goods to the value of 100 marks. My lord, if that first statute, or the common law, had not extended to require freeholds in London, then there would have been no need of this statute that was made to enable men to be jurors that had goods to the value of 100 marks. So that we take it to be good authority, that by the common law freehold was required in all civil causes. Then there is another statute 23 H. 8, c. 13, and that will be a strong evidence to shew what the law is: for the statute says, in cities and boroughs, in trials of murder and felony, if a freeman of the city of London is to be tried, the freemen shall be upon the jury, though they have not freehold; and then there is a Proviso, that for knights and esquires that are out of the Borough, though they are arraigned in the borough, that extends not to them, though in cases of murder and felony. As for this statute, we take this sense of it, first, that it does not extend to treasons; for when it only names murders and felonies, that makes no alteration as to treason, therefore that stands as before: but if there be any alteration, that extends only to freemen and burgesses that are to be tried, but not to knights and esquires; so that if we were in a case of felony and murder, I think we are not concerned in this statute; for we are no freeman nor burgess, but we are an esquire, and therefore ought to be tried by freeholders: so that for the law we rely upon these statutes, that we have looked upon as strong evidence, that there ought to be in the trial of the life of a man, especially for treason, freeholders. First, if it were in civil causes, if this qualification be not in jurymen, then an attaint would lie. The penalty in an attaint is, that their houses should be pulled down, &c. This is provided by the law, to the intent the jury may be careful to go according to their evidence. It is true, no attaint does lie in criminal causes; but if so be in civil causes there be required freeholders, and an attaint lies, if there be not, it is not reasonable to think but there should be as great regard to the life of a man as to his estate. Next, my lord, I do not know any law that sets any kind of qualification but this of freehold; so that be the persons of what condition or nature soever, (supposing they be not outlawed) yet these persons, if this law be not in effect, may then serve and be put upon the life of a man. These are the reasons, my lord, for which we apprehend they ought to be freeholders.

Mr. *Holt*. My lord, I would desire one word of the same side: we insist in this case upon these two things: first, we conceive by the common law, every jury-man ought to have a freehold; we have good authority for it, Coke's First Institutes; but if that were not so, I think the statute Mr. Pollexfen hath first mentioned, 2 H. 5, c. 3, to be express in this point. My lord, the statute in the preamble does recite all the mischiefs; it says, great mischiefs ensued by juries that were made up of persons that had not estates sufficient. In what? As well in the case of the death of a man, as in the case of freehold between party and party: the statute reciting this mischief does in express words provide two remedies for the same in these cases: first on the life and death of a man, the jury or inquest to be taken, shall have 40s. per ann. and so between party and party 40 marks; so that this being the trial of the death of a man, it is interpreted by Stamford, 162 a. that is, in all cases where a man is arraigned for his life, that is within the express words of the statute. Besides this exposition that hath been put upon the statute, my lord, it does seem, that the judgment of several parliaments hath been accordingly in several times and ages. My lord, to instance in one statute that hath not been mentioned, and that is the 33 of H. 8, c. 23, that does give the king power to award commissions of Oyer and Terminer, for trials in any county of England: and that (says the statute) in such cases no challenge to the shire or hundred shall be allowed; that is, you shall not challenge the jury in such a case, because they have not freehold, are not of the county where the treason was committed; but that, upon the trial, challenge, for lack of freehold of 40s. a year, shall be allowed, though it alters the manner of trying treason by the common law: so that, my lord, here is the opinion of every parliament, that though it took away the usual method of trials, yet it saves the prisoner's challenge for want of freehold. Now, indeed, that statute is repealed; but I mention it as to the Proviso, that it shews the judgment of that parliament at that time. My lord, those other statutes that have been made to regulate cities and towns corporate, why were they made? 33 H. 8. That no freehold should be allowed, that shews that 2 H. 5, did extend to these cases. But, my lord, these statutes that shew the judgment of the parliament sufficient for our purpose, do not extend to this case; the statute goes only to murders and felonies, but not to treasons: and we are in the case of a penal statute, and concerning the life and death of a man, which ought to be taken strictly, it ousts the prisoner of a benefit; and by parity of reason, if treason be not mentioned, your lordship cannot by equity extend it to it, when it only mentions inferior offences, and takes away the benefit in lower cases: like the case of the bishop of Winchester, where the statute set down dean and chapters, and other ecclesiastical persons, it shall not extend to bishops, because it begins

with persons of an inferior nature: no more shall murder and felony extend to treason. But further, the statute only concerns freemen; for there is an express proviso in the case: for in case any knight or esquire come to be tried in the place, he has his benefit as before. My lord, we are in this case, as in the case not mentioned in the statute, we are not a freeman of London. My lord, there is another thing, 7 H. 7, c. 5, why there was not only requisite at the common law, that the jurors had sufficient freehold, but it was required it should be in the hundred; and freehold in the wards in the city is the same with freehold in the hundreds in the country: so that the want of freehold in the hundred was a good cause of challenge. So that I think it will hardly be denied, but that a jury that passes upon the life of a man ought, by the law, by the statute, and by the judgment of the parliament, to have freehold. Where is there then any statute whatsoever that makes a difference in this case, between London and other counties? We are in the case of treason, we have taken our exceptions, and on behalf of the prisoner at the bar we pray the challenge may be allowed.

Mr. *Ward*. My lord, I shall be short, because Mr. Pollexfen has observed these things so particularly already. I observe the statute of H. 5, is a general statute, and extends throughout the realm: now when the thing is thus general, there is no room to except particulars. And in this case it is within the very words of the law; if the words be so generally penned in the negative, then we conceive there is no construction to be made upon them, unless some subsequent parliament alter it. Coke's Institutes, 157, where it is said in treason as well as any thing else, upon H. 5, there shall be freeholds; if they have provided in civil and other criminal causes, it were strange that this should be *casus omissus*; but there is no construction against a negative law: for the parliament taking care of the city of London, (as the subsequent statutes say) that he that hath a hundred marks shall pass in civil causes, and then it says in murders and felonies, and that only confined to the freemen of the place, does sufficiently explain the law, where it is not altered by any subsequent act; therefore I desire the challenge may be admitted.

Attorney General. My lord, These gentlemen's foundation is not good; for they prove it not by any books, that at common law it was requisite for a jury-man to have freehold. My lord, I deny their foundation; there is no such law; and at this day, in all criminal cases, where the statute does not direct it, as for riots and other informations for misdemeanour, there is no law restrains them, and they may be tried by any man they have no exception against. Then 2 H. 5, says, None shall be admitted to pass upon the death of a man, (I take it to extend to all capital matters, though it is pretty oddly expressed; for when a man is accused of other felonies and high treasons, 'tis of the death of a man) unless he have lands or tenements of the yearly value of 40s. But I will take it, as these gentlemen do at this time, it not being so at common law, nor in other criminal cases, but what are provided for by the statute: As to other matters of felony and murder, no doubt there these challenges are to be taken upon the statute, but not for treason, because the statute of queen Mary does expressly repeal that statute; and no statute since takes away the force of that of queen Mary; that all trials for treasons hall be as at the common law; and according to this the constant practice, in all cities (not only London) where persons have been indicted for high treason, hath been. There was never any such thing pretended: most of these gentlemen have freeholds, but we would not have this point lost to the city of London; so that the statute they speak of, and the interpretations of the several other statutes too, are to no purpose; for we say by common law, all causes might be tried by any persons, against whom there is not sufficient cause of challenge; and the common law is by that statute restored in this point.

Solicitor General. (Mr. Finch.) My lord, I have little to say; Mr. Attorney hath given a true answer to it; the foundation does fail them. It was not necessary at common law for a jury-man to have freehold: But then they must shew you, my lord, it is altered and made necessary. The statute of H. 5, does not seem to extend to treason; but if it did, 'tis now out of doors, by that of queen Mary, whereby all trials of treasons are reduced to the common law. This is that we answer, they fail in their foundation, they do not make it out, that it was necessary for a jury-man at common law to have freehold.

Serj. *Jefferies*. My lord, I confess they have cited several acts of parliament, and upon them lay their foundation, and draw inferences from them: But they will find, that in several acts of parliament, which they have quoted, there is a particular regard had for the preservation of the constant usage and customs for trials within the city of London. That notwithstanding several acts of parliament have in other places ascertained the value of jurors; yet they had still an eye, that the city of London should continue in its usages. I think it will be necessary to put you in mind of the case of the city of Worcester. It would be very hard, say they, because an attaint does not lie in criminal matters; if you intend by that to have people of ability, 'tis well known, that the ablest people in the city of London have scarce any freehold in it; for that most of the inheritances of the city of London remain in the nobility and in corporations. Now, in the case of my lord Russell, he hath a peremptory challenge to 35; and I think I may adventure to say, there can scarce be 35 more that can call themselves freeholders in London: consider the consequence then; treason should be committed in the city of London, and there

would not be enow in the city of London to try it. In the case of the Quo Warranto brought against the city of Worcester, to know by what warrant several took upon them the offices of aldermen, the gentlemen at the bar objected, that it was reasonable, that no freehold should be determined but by freeholders. But the judges of the King's-bench (the court being full) for the necessity of the thing, lest there might not be sufficient freeholders in that city, having sent one of the judges of that court to your lordships of the common pleas, for that reason did agree the challenge was not good. I know these gentlemen will please to remember the case; so that I say, as in one case we ought to be tender of the life of the prisoner, so we ought surely to be tender of the life of the king; otherwise it may so happen, that the king's life may be encompassed, and treason committed in the city, and there would be no way in the world to try it: Therefore we pray for the king the challenge may be over-ruled.

Mr. *North.* My lord, It is the practice to make the *Venire facias*, without mentioning freehold; for it does not command, that they return so many men that have freehold, but 'probos et legales homines de viceneto;' therefore at the common law, those were good inquests to try any man, that were not excommunicated, nor under any out-law. 'Tis true, there are statutes that say, all jurymen shall have freehold; but we say, these statutes do not extend to the city of London, but that it is governed by its own customs; and we say it is the custom, that citizens of ability have been returned that have no freehold. But granting what we do not, by way of supposal, my lord, it does not extend to this case, because trials are to be according to the use at common law, by the statute of queen Mary, which does set them at large again; and that is the reason the prisoner, in this case, hath his challenge for 35, and is in other cases restrained to 20; so that we say, these men of ability are good, and there is no statute affects them.

L. C. J. Mr. Pollexfen, Do you find any judgment that, in cases of treason, by common law, they might except for want of freehold? Have you any resolution in the case?

Mr. *Pollexfen.* I think there are books that say, at common law there must be freehold.

L. C. J. What, in treason?

Mr. *Pollexfen.* No, my lord.

L. C. J. Unless you speak of treason, you do not speak *ad idem*: For I do take it, that in cases of treason, or in cases of felony, at the common law, they had no liberty to except to jurors, that they had not any freehold; but that at the common law any good and lawful men might pass. Then take as introductive of a new law the statute of H. 5, I am of the mind, that this statute of H. 5, peradventure, may extend to treasons and felonies; but when the statute of queen Mary comes and says, all trials shall be by such evidence, and in such manner, as by common law they ought to have been, I do not see how it is possible to make an objection afterwards of this nature. For, admitting this act of parliament of H. 5. had altered the common law, and given a challenge, why then when the statute of queen Mary comes and sets all trials at large in the case of treasons, then certainly the challenge is gone again; and I doubt you will not find one exception in this case, ever since that statute concerning the jury's freehold in cases of treason, but it hath generally passed otherwise, and there hath not been any ever excepted. I doubt it will be a very hard thing to maintain such a challenge now. Here my lords and brothers will be pleased to deliver their opinions. It is a business of great consequence, not only for this noble person at the bar, but for all other persons.

Lord Chief Baron. (Mr. William Montagu) I agree with your lordship perfectly; but if the counsel had laid a right foundation, that it had been so at common law, there had been much said; but I take it at common law there was no challenge for want of freehold, and I am induced to think so; for otherwise what needed the statute of H. 5, been made? But whether it extend to treason or no, I am not so clear. And if it did, it is wiped off again by that of queen Mary, which reduces all to the common law trial.

Mr. Just. *Windham.* I am of the same opinion: I conceive at common law, lack of freehold no good cause of challenge. It is true, that challenge is given in some cases by act of parliament, yet I doubt whether it extend to a thing of so high a nature as treason; for other statutes have not mentioned any thing of treason. But suppose 2 H. 5, did extend to it, yet it is very plain, the statute of 1 and 2 queen Mary hath set all at large again, they are to be good and lawful men; and I do not find that any thing of the lawfulness must be the freehold. And therefore I conceive this is no just exception in this case.

Mr. Just. *Jones.* My lord, I am of the same opinion. I am of opinion, that the common law did not require freehold to be a good cause of challenge in the case of treason, and the rather, because at the common law, a man that was indicted of high treason had liberty to challenge, peremptorily, to the number of 35 persons. My lord, if the common law be altered by the statute of H. 5, yet I take it, that the statute of 1 and 2 Ph. and M. does restore the common law in this particular point. For whereas there was a statute H. 8, to restrain the prisoner to the number of 20 for his challenge, now the statute restoring it to common law, the prisoner hath his challenge to 35, as he had before that statute of H. 8. So I take it the king shall have his privilege also to try a prisoner for treason, by persons that have not freehold.

Mr. Just. *Charlton.* I am of the same opinion: And truly the rather, because no precedent hath been offered of any such challenge before, and many men have suffered, and sure,

if it could have been, many would have made use of it.

Mr. Just. *Levinz.* I am of opinion, it is not to be allowed. I do not think myself driven to the necessity to determine now, whether freehold was a good challenge at common law in point of treason. I think the statute of Ph. and M. hath restored the trials to the common law. What was the common law? The common law is the custom of England, which is other in cities than in counties, and the custom of London is part of that common law. So, though it be a cause of challenge in a county at large, yet it is not a cause of challenge in cities, where freeholders are not to be found. Now that which satisfies me is, That this custom is restored by the statute of Ph. and Mary; because never such a challenge hath been. And it is known when 20 were tried for treason together in this very place, and one of them a notable cunning lawyer, and if such a challenge were to have been allowed, no doubt he would have made use of it; but the challenge was not taken, and if he had made such a challenge, and it had been allowed, perhaps he could not have been tried: That was Cook. I have heard several persons tried for treason myself, and never heard it taken. Therefore I am of opinion, that before any statute was made in this case, it was the custom in London to try without freeholds, and since by the statute of queen Mary it is restored.

Mr. Baron *Street.* I think there was no such challenge at common law. The jury were only to be 'probos et legales homines,' and no more, till the statute made it so; but there is a particular reservation to corporations. And certainly, if this should be admitted to be a good challenge, though it were between party and party, there would be in some corporations a perfect failure of justice. So that, without doubt, at common law there was no such challenge. As for the statute of H. 5, it is gone by that of queen Mary. If this were admitted within London, nothing would be more mischievous to this corporation. Methinks we have been very nice in this matter, when the life of the king is at stake, and all the customs and privileges of the city of London seem to be levelled at in this point. I am of the opinion with the rest of the judges, that this challenge ought to be over-ruled.

Just. *Withins.* I am of the same opinion.

L. C. J. My lord, the court is of opinion, upon hearing your counsel, and the king's, that it is no good challenge to a jury in a case of treason, that he has not freehold within the city:* But I must tell your lordship withal, that your lordship has nothing of hardship in this case; for, notwithstanding that, I must tell you, you will have as good a jury, and better than you should have had in a county, of 4*l.* or 40*s.* a year freeholders. The reason of the law for freeholds is, That no slight persons should be put upon a jury, where the life of a man, or his estate, comes in question; but in the city, the persons that are impanelled are men of quality and substance, men that have a great deal to lose. And therefore your lordship hath the same in substance, as if a challenge was allowed of freehold. It will be no kind of prejudice to your lordship in this case. Therefore, if you please, apply yourself as the jury is called, and make your exceptions, if you shall make any.

L. C. J. Mr. Pollexfen, you shall have liberty to stay any where here, if you please.

Counsel. Here is such a great crowd, my lord, we have no room.

Then the Jurymen were called, and after the lord Russel had challenged one and thirty of them, the Jury sworn were as follows: John Martin, William Rouse, Jervas Seaton, William Fashion, Thomas Short, George Torriano, William Butler, James Pickering, Thomas Jeve, Hugh Noden, Robert Brough, Thomas Oneby.

Then was made Proclamation for Information.

Cl. of Cr. William Russel, esq. hold up thy hand. (Which he did). You of the Jury, look upon the prisoner, and hearken to his cause: He stands indicted by the name of ——— *prout* before in the Indictment. Upon this Indictment he hath been arraigned, and thereunto pleaded not guilty, and for his trial hath put himself upon his country, which country you are: Your charge is to inquire whether he be guilty of this high treason whereof he stands indicted, or not guilty: If you find him guilty, you shall inquire, &c.

Mr. *North.* May it please your lordship, and you that are sworn, the prisoner at the bar stands charged in this Indictment with no less than the conspiring the death of the king's majesty; and that, in order to the same, he did, with other traitors named in the Indictment, and others not known, November 2, in the 34th year of this king, in the parish of Bassishaw, within the city of London, meet and conspire together to bring our sovereign lord the king to death, to raise war and rebellion against him, and to massacre his subjects: And in order to compass these wicked designs, there being assembled, did conclude to seize the king's guards, and his majesty's person.

* This Case as to this point is thus reported 2 Show. 310: "The king against lord Russell. The defendant was tried at the Old-Bailey for high-treason, and upon his trial he challenged a juror in London for not having a freehold, and resolved by Pemberton, chief justice, and the other ten judges then present, that want of freehold is no challenge in treason, much less in a corporation." But now, see stat.'s 1 W. and M. st. 2, c. 2. 4 and 5 W and M, c. 24: the provisions of which I have been surprised not to see noticed in Mr. East's Treatise of the Pleas of the Crown. See, too, Townly's Case, A. D. 1746, in this Collection, and Fost. 7.

This is the charge: The defendant says he is not guilty; if we prove it upon him, it will be your duty to find it.

Att. Gen. My lord, and you, gentlemen of the Jury, most of our evidence against this honourable person at the bar is to this purpose: This person, the duke of Monmouth, my lord Grey, sir Thomas Armstrong, and Mr. Ferguson, they were the council of state, as I may call them, to give forth directions for the general rising that hath appeared was to have been within this kingdom. The rising was of great concern and expence, and must be managed by persons of interest, prudence, and great secrecy. These gentlemen had frequent meetings in October and November last, (for then, you may refresh your memories again, was the general rising to be) and there they did consult how to manage the rising they consulted how to seize the king's guards; and this noble person being mixed with these others, especially with Ferguson, who with others of an inferior rank was also engaged in a cabal for managing worse things, (though this is bad enough) at several meetings they receive messages from my lord Shaftesbury touching the rising; they being looked upon as the persons that were to conclude and settle the time, and all circumstances about it.

We shall make it appear to you in the course of our evidence, that those underlings (for this was the great consult, and moved all the other wheels) who managed the assassination, did take notice, that these lords and gentlemen of quality were to manage and clear the whole business of the rising. It seems these gentlemen could not give the earl of Shaftesbury satisfaction to his mind; for he pressed them to keep their day, which was the 17th of November last; but the honourable person at the bar, and the rest, made him this answer, that Mr. Trenchard had failed them; for that he had promised to have 1,000 foot, and 2 or 300 horse, at four hours warning; but now it was come to pass, he could not perform it; that some persons in the west would not join with them, and therefore at this time they could not proceed; and therefore they must defer the day. And at a council, they sent my lord Shaftesbury word, he must be contented, they had otherwise resolved, and thereupon my lord Shaftesbury went away, and Mr. Ferguson with him.

To carry on this practice, they took others into their council, sir Thomas Armstrong was left out, and there falling that scandalous report upon my lord Grey, he was to be left out, and then there was to be a new council of six, whereas the inferior council to manage the assassination was seven. At this council there was this honourable person at the bar, the duke of Monmouth, my lord Howard, and another honourable person, who I am sorry to name upon this account, who hath, this morning, prevented the hand of justice upon himself, my lord of Essex, and col. Sidney, and Mr. Hambden: These six had their frequent consults at this honourable person's house; for they had excluded sir Thomas Armstrong, and my lord Grey; for these gentlemen would have the face of religion; and my lord Grey was in their esteem so scandalous, that they thought that would not prevail with the people, if he was of the council. There they debated how they should make this rising; after several consultations they came to this resolution: That before they did fall upon this rising, they should have an exact account both of the time and method of the Scotch rising, and thereupon a messenger was sent on purpose by colonel Sidney, viz. Aaron Smith, to invite Scotch Commissioners to treat with these noble lords. Pursuant to this, just before the Plot brake out, several from Scotland came to treat with them how to manage the work; 30,000*l.* was demanded by the Scots, in order that they should be ready in Scotland; then they fell to 10,000, and at last, (for the Scots love money) they fell to 5,000, which they would take and run all hazards; but they not coming to their terms, that broke off that week the Plot was discovered.

Gentlemen, if we prove all these instances, besides, we shall call some to shew you, that all the inferior party still looked upon these to be the heads; and though they kept it secret, God hath suffered it to come to light, with as plain an evidence as ever was heard.

Serj. *Jefferies.* I will not take up any of your lordship's time; we will call our witnesses to prove the fact Mr. Attorney hath opened. Swear col. Rumsey (which was done). Pray, colonel Rumsey, will you give my lord and the jury an account, from the beginning to the end, of the several meetings that were, and what were the debates of those meetings?

Col. *Rumsey.* My lord, I was at my lord Shaftesbury's lodging, where he lay, down by Wapping, about the latter end of October, or the beginning of November; and he told me, there was met at one Mr. Sheppard's house, the duke of Monmouth, my lord Russell, my lord Grey, sir Thomas Armstrong, and Mr. Ferguson; and he desired me to speak to them, to know what resolution they were come to about the rising of Taunton: I did go there accordingly, and call for Mr. Sheppard, and he carried me up where they were, and the answer that was there made me was, that Mr. Trenchard had failed them, and there would no more be done in the matter at that time.

Att. Gen. Tell the whole passage.

Rumsey. I did say my lord Shaftesbury had sent me to know what resolution they had taken about the rising of Taunton. They made me this answer, that Mr. Trenchard had failed them, that he had promised 1,000 foot and 300 horse; but when he came to perform it, he could not. He thought the people would not meddle, unless they had some time to make provision for their families.

L. C. J. Who had you this message from?

Rumsey. Mr. Ferguson did speak most of it.

L. C. J. Who sent this message back?

Rumsey. Mr. Ferguson made the answer my lord Russell and the duke of Monmouth were present, and I think my lord Grey did say something to the same purpose.

Att. Gen. Pray, how often were you with them at that house?

Rumsey. I do not know: I was there more than once, I was there either another time, or else I heard Mr. Ferguson make a report of another meeting to my lord Shaftsbury.

Serj. *Jeff.* Was my lord Russell in the room when this debate was?

Rumsey. Yes, my lord.

Att. Gen. What did they say further?

Rumsey. That was all at that time, that I remember.

Att. Gen. Was there nothing of my lord Shaftesbury to be contented?

Rumsey. Yes, that my lord Shaftesbury must be contented; and upon that he took his resolution to be gone.

L. C. J. Did you hear any such resolution from him?—*Rumsey.* Yes, my lord.

Att. Gen. Did you know of their meeting there, or was it by my lord Shaftesbury's direction?

Rumsey. No, but my lord told me, I should find such persons, and accordingly I found them: and this answer was given.

Att. Gen. What time did you stay?

Rumsey. I think I was not there above a quarter of an hour.

Att. Gen. Was there any discourse happened while you were there about a Declaration?

Rumsey. I am not certain whether I did hear something about a declaration there, or that Mr. Ferguson did report it to my lord Shaftesbury, that they had debated it.

Serj. *Jeff.* To what purpose was the declaration?

L. C. J. We must do the prisoner that right; he says he cannot tell whether he had it from him or Mr. Ferguson.

Att. Gen. Did you hear no discourse to what it tended?

Rumsey. My lord, there was some discourse about seeing what posture the guards were in.

One of the Jury. By whom, Sir?

Rumsey. By all the company that was there.

L. C. J. What was that discourse?

Rumsey. To see what posture they were in, that they might know who to surprise them.

L. C. J. The Guards?

Rumsey. Yes, that were at the Savoy and the Mews.

L. C. J. Whose were the words? Tell the words as near as you can.

Rumsey. My lord the discourse was, that some should—

L. C. J. Who made that discourse?

Rumsey. My lord, I think sir Thomas Armstrong began it, and Mr. Ferguson.

Att. Gen. Was it discoursed among all the company?

Rumsey. All the company did debate it. Afterwards they thought it necessary to see with what care and vigilance they did guard themselves at the Savoy and Mews, whether they might be surprised or not.

Att. Gen. Were there any undertook to go and see there?

Rumsey. There were some persons.

Serj. *Jeff.* Name them.

Rumsey. I think the duke of Monmouth, my lord Grey, and sir Thomas Armstrong.

Serj. *Jeff.* Was my lord Russell, the prisoner, there, when they undertook to take the view?—*Rumsey.* Yes, Sir.

Att. Gen. To what purpose was the view?

Rumsey. To surprise them, if the rising had gone on.

Serj. *Jeff.* Did you observe by the debates that happened, that they did take notice there was a rising intended?—*Rumsey.* Yes.

Serj. *Jeff.* And that direction was given to take a view of the guards, if the rising had gone on?—*Rumsey.* Yes.

L. C. J. Pray, Sir, declare justly the discourse.

Rumsey. I went to them from my lord Shaftesbury: and I did tell them, that my lord did pray they would come to some resolution; and they told me, Mr. Trenchard they depended upon for Taunton had failed them, who when he came up to town first at the term, had assured them, that in three or four hours time he could have 1,000 foot, and 300 horse; but now it came to be tried, he answered, it was not possible for him to undertake it; for people would not rush into it of a sudden, but have some time to prepare for their families.

Att. Gen. Was it pretended there should be a rising at that time?

Rumsey. Yes, the 19th of November was appointed for the rising.

L. C. J. Was it before that time you went to press them from my lord Shaftesbury?

Rumsey. Yes, I think it was a matter of a fortnight before, or something more. For I think it was concluded Sunday fortnight after my lord Grey met.

Att. Gen. But you say, besides what you heard there, you understood there was to be a rising at that time: was you to be engaged in this?—*Rumsey.* Yes, I was.

L. C. J. You must speak so, that what you deliver may be sensible; for if you speak, I apprehend so and so, that will be doubtful.

Rumsey. No, my lord, the rising was determined, and I was to have gone to Bristol.

Att. Gen. In what capacity, as colonel, or captain?

Rumsey. There was no determination of that, no quality.

L. C. J. By whose appointment was that?

Rumsey. My lord Shaftesbury spake that to me.

Serj. *Jeff.* But pray, col. Rumsey, this you are very able to know, what the debates were, and need not be pumped with so many ques-

tions: pray, was there any debate when you came with the message from my lord Shaftsbury's, was there a debate about the rising?

Rumsey. There was no debate of it, because they made answer, Mr. Trenchard had failed them.

Serj. *Jeff.* But did not they take notice of the rising? Give an account of it.

Rumsey. I have done it twice.

Jury. We desire to know the message from the lord Shaftsbury.

L. C. J. Direct yourself to the court: some of the gentlemen have not heard it, they desire you would, with a little more loud voice, repeat the message you were sent of from my lord Shaftesbury.

Rumsey. I was sent by my lord, to know the resolution of the rising in Taunton: they answered Mr. Trenchard, whom they depended upon for the men, had failed them, and that it must fall at that time, and my lord must be contented.

Att. Gen. Was the prisoner at the bar present at that debate?—*Rumsey.* Yes.

Serj. *Jeff.* Did you find him averse to it, or agreeing to it?—*Rumsey.* Agreeing to it.

Baron *Street.* What said lord Shaftesbury?

Rumsey. Upon my return he said, he would be gone, and accordingly did go.

Serj. *Jeff.* If my lord Russell pleases to ask him any questions, he may.

Ld. *Russell.* Must I ask him now?

L. C. J. Yes, my lord, propose your questions to me.

Ld. *Russell.* I have very few questions to ask him, for I know little of the matter; for it was the greatest accident in the world I was there, and when I saw that company was there, I would have been gone again. I came there accidentally to speak with Mr. Sheppard; I was just come to town, but there was no discourse of surprising the guards, nor no undertaking of raising an army.

L. C. J. We will hear you to any thing by-and-by, but that which we now desire of your lordship, is, as the witnesses come, to know if you would have any particular questions asked of them.

Ld. *Russell.* I desire to know, if I gave any answer to any message about the rising: I was up and down; I do not know what they might say when I was in the room; I was tasting of wine.

L. C. J. Did you observe, that my lord Russell said any thing there and what?

Rumsey. Yes, my lord Russell did speak.

L. C. J. About what?

Rumsey. About the rising of Taunton.

Ld. *Russell.* It was sir Tho. Armstrong that conversed with Mr. Trenchard.

L. C. J. What did you observe my lord Russel to say?

Rumsey. My lord Russell did discourse of the rising.

Ld. *Russell.* How should I discourse of the rising at Taunton, that knew not the place, nor had knowledge of Trenchard?

Att. Gen. Now, my lord, we will give your an account, that my lord Russell appointed this place, and came in the dark without his coach.

Ld. *Russell.* My lord, I think the witness was asked, if I gave my consent.

L. C. J. What say you, did my lord give any consent to the rising?

Rumsey. Yes, my lord, he did.

Att. Gen. Pray, swear Mr. Sheppard.—(Which was done.) Pray, will you speak aloud, and give an account to my lord and the jury, of the meetings at your house, and what was done?

Mr. *Sheppard.* In the month of October last, as I remember, Mr. Ferguson came to me in the duke of Monmouth's name, and desired the conveniency of my house, for him and some other persons of quality to meet there. And as soon as I had granted it, in the evening the duke of Monmouth, my lord Grey, my lord Russell, sir Thomas Armstrong, col. Rumsey, and Mr. Ferguson came. Sir T. Armstrong desired me, that none of my servants might come up, but they might be private; so what they wanted I went down for, a bottle of wine or so. The substance of their discourse was, how to surprise the king's guards: and in order to that, the duke of Monmouth, my lord Grey, and sir Thomas Armstrong, as I remember, went one night to the Mews, or thereabout, to see the king's guards: and the next time they came to my house, I heard sir T. Armstrong say, The guards were very remiss in their places, and not like soldiers, and the thing was feasible, if they had strength to do it.

Att. Gen. How many meetings had you there?

Sheppard. I remember but twice, Sir.

Att. Gen. Did they meet by chance, or had you notice they would be there that night?

Sheppard. Yes, I did hear it before.

Sol Gen. Who had you notice would be there?

Sheppard. The duke of Monmouth, my lord Grey, my lord Russell, sir T. Armstrong, col. Rumsey, and Mr. Ferguson.

Att. Gen. Did they come with their coaches, or a-foot, in the night-time, and in the dark?

Sheppard. I cannot tell; it was in the evening, I did not let them in.

Att. Gen. Were there any coaches at the door?

Sheppard. None that I heard, or saw, they came not altogether, but immediately one after another.

Serj. *Jeff.* Had they any debate before they went into the room?

Sheppard. No, they went readily into the room.

Serj. *Jeff.* Was my lord Russell both times there?

Sheppard. Yes, Sir, as I remember.

Serj. *Jeff.* Had you any particular business with my lord Russell, or he with you?

Sheppard. No, not at that time, but since I have had, about the affairs of my lord Shaftesbury.

Serj. *Jeff.* Do you remember col. Rumsey, at the first time, had any discourse about any private business relating to my lord Russell?

Sheppard. No, I do not remember it.

Att. Gen. Besides the seizing of the guards, did they discourse about rising?

Sheppard. I do not remember any further discourse, for I went several times down to fetch wine, and sugar, and nutmeg, and I do not know what was said in my absence.

Serj. *Jeff.* Do you remember any writings or papers read at that time?

Sheppard. None that I saw.

Serj. *Jeff.* Or that you heard of?

Sheppard. Yes, now I recollect myself, I do remember one paper was read.

Serj. *Jeff.* To what purpose was it?

Sheppard. It was somewhat in the nature of a declaration; it was read by Mr. Ferguson; who was present at the reading, I cannot say, whether they were all present or not. The purport of it was setting forth the grievances of the nation, but truly what particulars I can't tell: It was a pretty large paper.

Att. Gen. But can you tell the effect of it, when was that to be set out?

Sheppard. It was not discoursed, it was shewn only, I suppose for approbation.

Att. Gen. Who was it shewed to?

Sheppard. Sir Thomas Armstrong.

Serj. *Jeff.* Who else?

Sheppard. As I remember, the duke was present, and I think col. Rumsey.

Col. *Rumsey.* No, I was not; it was done before I came.

Serj. *Jeff.* What was the design of that paper? Recollect yourself, what was the design?

Sheppard. The design of that paper was in the nature of a Declaration, setting forth the grievances of the nation, in order to a rising, I suppose by the purport of the paper; but cannot remember the particular words of it.

Foreman of the Jury. Can you say my lord Russell was there, when that Declaration was read, as you call it?

Sheppard. I can't say that.

Att. Gen. But he was there, when he talked of seizing the guards?

Sheppard. Yes, my lord was there then.

Ld. *Russell.* Pray Mr. Sheppard, do you remember the time when these meetings were?

Sheppard. I can't be positive as to the time. I remember it was at the time my lord Shaftesbury was absent from his own house, and he absented himself from his own house about Michaelmas-day, but I cannot be positive as to the time.

Ld. *Russell.* I never was but once at your house, and there was no such design as I heard of. I desire that Mr. Sheppard may recollect himself.

Sheppard. Indeed, my lord, I can't be positive in the times. My lord, I am sure, was at one meeting.

L. C. J. But was he at both?

Sheppard. I think so; but it was eight or nine months ago, and I can't be positive.

Ld. *Russell.* I can prove I was then in the country. Col. Rumsey said there was but one meeting.

Col. *Rumsey.* I do not remember I was at two; if I was not, I heard Mr. Ferguson relate the debates of the other meeting to my lord Shaftesbury.

Ld. *Russel.* Is it usual for the witnesses to hear one another?

L. C. J. I think your lordship need not concern yourself about that; for I see the witnesses are brought in one after another.

Ld. *Russell.* There was no design.

Serj. *Jeff.* He hath sworn it.

Att. Gen. Swear my lord Howard. [Which was done.] Pray, will your lordship give an account to the court, what you know of a rising designed before my lord Shaftesbury went away, and afterwards how it was continued on.

Lord *Howard.* My lord, I appear with some confusion. Let no man wonder, that it is troublesome to me. My lord, as to the question Mr. Attorney puts to me, this is the account I have to give: It is very well known to every one, how great a ferment was made in the city, upon occasion of the long dispute about the election of sheriffs; and this soon produced a greater freedom and liberty of speech one with another, than perhaps had been used formerly, though not without some previous preparations and dispositions made to the same thing. Upon this occasion, among others, I was acquainted with captain Walcot, a person that had been some months in England, being returned out of Ireland, and who indeed I had not seen for eleven years before. But he came to me as soon as he came out of Ireland, and when these unhappy divisions came, he made very frequent applications to me; and though he was unknown himself, yet being brought by me, he soon gained a confidence with my lord Shaftesbury, and from him derived it to others. When this unhappy rent and division of mind was, he having before got himself acquainted with many persons of the city, had entered into such counsels with them, as afterwards had the effect, which in the ensuing narrative I shall relate to your lordship. He came to me, and told me, that they were now sensible all they had was going, that this force put upon them—

L. C. J. Pray my lord, raise your voice, else your evidence will pass for nothing.

One of the Jury. We cannot hear, my lord.

Lord *Howard.* There is an unhappy accident happened that hath sunk my voice: I was but just now acquainted with the fate of my lord of Essex.* My lord, I say, he came to

* It appears that an impression of the nature of what in the theatre is called 'stage effect,' was produced by the communication during the course of lord Russell's trial, of the catastrophe which had just befallen the earl of Essex, and there is some reason to believe that the production of that impression was designed,

me, and did acquaint me, that the people were now so sensible that all their interest was going, by that violence offered to the city in their elections, that they were resolved to take some course to put a stop to it, if it were possible: He told me there were several consults and meetings of persons about it, and several persons had begun to put themselves into a disposition and preparation to act; that some had furnished themselves with very good horses, and kept them in the most secret and blind stables they could; That divers had intended it, and for his own part he was resolved to imbark himself in it. And having an estate in Ireland, he thought to dispatch his son thither (for he had a good real estate, and a great stock, how he disposed of his real estate I know not); but he ordered his son to turn his stock into money to furnish him for the occasion: This I take to be about August, his son was sent away. Soon after this, the son not being yet returned, and I having several accounts from him, wherein I found the fermentation grew higher and higher, and every day a nearer approach to action, I told him I had a necessity to go into Essex to attend the concerns of my own estate; but told him, how he might by another name convey letters to me, and gave him a little cant, by which he might blind and disguise the matter he wrote about, when I was in the country. I received two or three letters from him, that gave me an account in that disguised style, but such as I understood, that the negotiation which he had with my correspondents was going on, and in good condition; and it was earnestly desired I would come to town; this was the middle of September. I, notwithstanding, was willing to see the result of that great affair, upon which all men's eyes were fixed, which was the determination of the shrivalty about that time. So I ordered it to fall into town, and went to my own house on Saturday night, which was Michaelmas-day. On Sunday he came to me, and dined with me, and told me, (after a general account given me of the affairs of the times) that my lord Shaftesbury was secreted and withdrawn from his own house in Aldersgate-street; and that though he had a family settled, and had absconded himself from them, and divers others of his friends and confidents; yet he did desire to speak with me, and for that purpose sent him to shew me the way to his lodging: He brought me to a house at the lower end of Wood-street, one Watson's house, and there my lord was alone. He told me he could not but be sensible, how innocent soever he was, both he and all honest men were unsafe, so long as the administration of justice was in such hands as would accommodate all things to the humour of the court: That in the sense of this he thought it but reasonable to provide for his own safety, by withdrawing himself from his own house into that retirement: That now he had ripened affairs to that head, and had things in that preparation, that he did not doubt but he should be able, by those men that would be in readiness in London, to turn the tide, and put a stop to the torrent that was ready to overflow. But he did complain to me, that his design, and the design of the public, was very much obstructed by the unhandsome deportment of the duke of Monmouth, and my lord Russell, who had withdrawn themselves not only from his assistance, but from their own engagements and appointments: For when he had got such a formed force as he had in London, and expected to have it answered by them in the country, they did recede from it, and told him they were not in a condition or preparation, in the country, to be concurrent with him at that time. This he looked upon but as an artificial excuse, and as an instance of their intentions wholly to desert him; but notwithstanding there was such preparation made in London, that if they were willing to lose the honour of being concurrent with him, he was able to do it himself, and did intend speedily to put it into execution. I asked him, what forces he had? He said he had enough. Says I, What are you assured of? Says he, There is above ten thousand brisk boys are ready to follow me, whenever I hold up my finger. Says I, How have you methoded this, that they should not be crushed? for there will be a great force to oppose you. Yes, he answered, but they would possess themselves of the gates; and these ten thousand men, in 24 hours, would be multiplied into five times the number, and be able to make a sally out, and possess themselves of Whitehall, by beating the Guards. I told him, this was a fair story, and I had reason to think, a man of his figure would not undertake a thing that might prove so fatal, unless it were laid on a foundation that might give a prudent man ground to hope it would be successful. He said he was certain of it, but confessed it was a great disappointment that these lords had failed him. I told him, I was not provided with an answer at that time; that he well

and warmly desired by lord Russell's enemies. See in this Collection the Case of Braddon and Speke, in the next year 1684.

It is reported (see Echard and Kennet,) that upon occasion of Essex's death king Charles the Second said (in allusion to the fate of Essex's father lord Capel. See his Case, vol. 4, p. 1195, of this Collection.) "My lord of Essex needed not to have despaired of mercy, for I owed him a life." Of this declaration that he would have pardoned Essex, Mr. Fox observes, that "being made when that nobleman was dead, and not followed by any act evincing its sincerity, it can surely obtain no credit from men of sense. If he had really had the intention he ought not to have made such a declaration, unless he accompanied it with some mark of kindness to the relations, or with some act of mercy to the friends of the deceased" See too, in another Note to this Case, Mr. Fox's observation on Charles the Second's speech, upon remitting part of the judgment upon lord Russell.

knew me, and knew the general frame and bent of my spirit. But I told him, I looked upon it as dangerous, and ought to be laid deep, and to be very well weighed and considered of; and did not think it a thing fit to be entered upon, without the concurrence of those lords: and therefore desired, before I discovered my own inclination, to discourse with those lords. He did consent, with much ado; but, says he, you will find they will wave it, and give doubtful and deferring answers, but you will find this a truth. I went to Moor-Park the next day, where the duke of Monmouth was, and told him the great complaint my lord Shaftesbury had made, that he failed him. Says he, I think he is mad: I was so far from giving him any encouragement, that I did tell him from the beginning, and so did my lord Russell, there was nothing to be done by us in the country at that time. I did not then own I had seen my lord, but spake as if this were brought me by a third person, because he had not given me liberty to tell them where his lodging was. Says I, my lord, I shall be able to give a better account of this in a day or two: Shall I convey it to my lord, that you are willing to give a meeting? Yes, says he, with all my heart. This was the 2nd, 3rd, or 4th of October. I came to town on Saturday, and was carried to him on Monday; and I suppose this was Tuesday the 2nd of October. On Wednesday, I think, I went to him again, (but it is not very material) and told him I had been with the duke of Monmouth, and given him a punctual account of what I had from him; and the duke did absolutely disown any such thing; and told me, he never did give him any encouragement to proceed that way, because the countries were not in a disposition for action, nor could be put in readiness at that time. Says my lord Shaftesbury, It is false: they are afraid to own it. And, says he, I have reason to believe, there is some artificial bargain between his father and him, to save one another: for when I have brought him to action, I could never get him to put on, and therefore I suspect him: and, says he, several honest men in the city have puzzled me, in asking how the duke of Monmouth lived: says he, They puzzled me, and I could not answer the question; for I know he must have his living from the king; and, says he, we have different prospects: we are for a Commonwealth, and he hath no other design but his own personal interest, and that will not go down with my people now, (so he called them) they are all for a commonwealth: and then, says he, It is to no purpose for me to see him; it will but widen the breach, and I dare not trust him to come hither. Says I, my lord, that's a good one indeed! Dare not you trust him, and yet do you send me to him on this errand? Nay, says he, it is because we have had some misunderstanding of late; but I believe he is true enough to the interest. Says I, It is a great unhappiness to take this time to fall out, and I think it is so great a design, that it ought to be undertaken with the greatest strength and coalition in the kingdom. Says he, my friends are now gone so far, that they can't pull their foot back again without going further; for, says he, it hath been communicated to so many, that is impossible to keep it from taking air, and it must go on. Says he, We are not so unprovided as you think for; there are so many men, that you will find as brisk men as any in England. Besides, we are to have 1,000 or 1,500 horse, that are to be drawn by insensible parties into town, that when the insurrection is, shall be able to scour the streets and hinder them from forming their forces against us. My Lord, after great inlargement upon this head, and heads of the like nature, I told him I would not leave him thus, and that nothing should satisfy me, but an interview between him and the lords. No, I could not obtain it: but if I would go and tell them what a forwardness he was in, and that, if they would do themselves right, by putting themselves upon correspondent action in their respective places, and where their interest lay, well; otherwise he would go away without them. So I went again to the duke of Monmouth, I spake to him only (I never spake to my lord Russell then, only we were together, but I had never come to any close conjunction of counsels in my life with him at that time). Says I, to the duke, this man is mad, and his madness will prove fatal to us all; he hath been in a fright by being in the Tower, and carries those fears about him that cloud his understanding; I think his judgment hath deserted him, when he goes about with those strange sanguine hopes that I can't see what should support him in the ground of them. Therefore, says I, pray will you give him a meeting. God-so, says the duke, with all my heart, and I desire nothing more. Now I told him, I had been with my lord Shaftesbury, with other inlargements that I need not trouble your lordship with: well, says he, Pray go to him, and try if it be possible to get a meeting: so I went to him, and told him. Says I, this is a great unhappiness, and it seems to be a great absurdity, that you are so forward to act alone in such a thing as this. Pray, says I without any more to do, since you have this confidence to send for me, let me prevail with you to meet them, and give them an interview, or else you and I must break. I will no longer hold any correspondence, unless it be so. Says he, I tell you they will betray me. In short he did with much importunity yield that he would come out the next night in a disguise. By this time it was Saturday, I take it to be the sixth of October; an Almanack will settle that: so the next night being Sunday, and the shops shut, he would come out in a concealment, be carried in a coach, and brought to his own house, which he thought then was safest. I came and gave the duke of Monmouth an account of it; the duke, I suppose, conveyed the same understanding to my lord

Russell; and, I suppose, both would have been there accordingly, to have given the meet ing; but next morning I found colonel Rumsey had left a note at my house, that the meeting could not be that day. Then I went to th duke of Monmouth, and he had had the account before, that my lord Shaftesbury did apprehend himself to be in some danger in tha house, and that the apprehension had occasionec him to remove; but we should be sure to hea from him in two or three days. We took it a a waiver, and thought he did from thence in tend to abscond himself from us, and it prove so to me, for from that time I never saw hir But captain Walcot came to me, and told me that he was withdrawn, but it was for fear hi lodging might be discovered, but he did no doubt but in a week he would let me know where his lodging was: but told me within such a time which I think was eight or ten days, there woul be a rising; and I told the duke of Monmoutl and I believe he told my lord Russell; and w believed his frenzy was now grown to tha height, that he would rise immediately, and put his design in execution; so we endeavoure to prevent it. Upon which my lord Russell (was told) and the duke of Monmouth, did forc their way to my lord Shaftesbury's, and did persuade him to put off the day of his rendezvous I had not this from my lord Russell, for I ha not spoke a word to him; but the duke tol me my lord Russell had been with him (I ha indeed an intimation, that he had been with him but the duke told me, says he, I have nc been with him, but my lord Russell was, havin been conveyed by colonel Rumsey. Afte this day was put off it seems it was put o with this condition that those lords, an divers others, should be in a readiness t raise the country about that day fortnigh or thereabouts; for there was not abov a fortnight's time given: and, says th duke of Monmouth, we have put it off, but no we must be in action, for there is no holding off any longer. And says he, I have been a Wapping all night, and I never saw a compan of bolder and brisker fellows in my life; an says he, I have been round the Tower, an seen the avenues of it; and I do not think will be hard, in a little time, to possess ourselve of it: but, says he, they are in the wrong wa yet we are engaged to be ready for them in fortnight, and therefore, says he, now we mu apply ourselves to it as well as we can. An thereupon I believe they did send into th country; and the duke of Monmouth told m he spake to Mr. Trenchard, who was to tak particular care of Somersetshire, with this cir cumstance: Says he, I thought Mr. Trenchar had been a brisker fellow; for when I told hi of it, he looked so pale, I thought he woul have swooned, when I brought him to th brink of action; and said, I pray go and d what you can among your acquaintance; an truly, I thought it would have come then t action. But I went the next day to him, an he said it was impossible; they could not g the gentlemen of the country to stir yet.

Ld. *Russell.* My lord, I think I have very hard measure, here is a great deal of evidence by hear-say.

L. C. J. This is nothing against you, I declare it to the jury.

Att. Gen. If you please, my lord, go on in the method of time. This is nothing against you, but it's coming to you, if your lordship will have patience, I assure you.

Ld. *Howard.* This is just in the order it was done. When this was put off, then they were in a great hurry; and captain Walcot had been several times with me, and discoursed of it. But upon this disappointment they said, it should be the dishonour of the lords, that they were backward to perform their parts; but still they were resolved to go on. And this had carried it to the latter end of October. About the 17th or 18th, captain Walcot came to me, and told me, now they were resolved positively to rise, and did believe, that a smart party might perhaps meet with some great men. Thereupon I told the duke of it; I met him in the street, and went out of my own coach into his, and told him, that there was some dark intimation, as if there might be some attempt upon the king's person; with that he struck his breast with a great emotion of spirit, and said, God-so, kill the king! I will never suffer that. Then he went to the play-house to find sir Thomas Armstrong, and send him up and down the city to put it off, as they did formerly; and it was done with that success, that we were all quieted in our minds, that at that time nothing would be done: but upon the day the king came from Newmarket, we dined together; the duke of Monmouth was one, and there we had a notion conveyed among us, that some bold action should be done that day; which comparing it with the king's coming, we concluded it was designed upon the king. And I remember my lord Grey, says he, By God, if they do attempt any such thing, it can't fail. We were in great anxiety of mind, till we heard the king's coach was come in, and sir Thomas Armstrong not being there, we apprehended that he was to be one of the party (for he was not there). This failing, it was then next determined (which was the last alarum and news I had of it) to be done upon the 17th of November, the anniversary of queen Elizabeth; and I remember it by this remark I made myself, that I feared it had been discovered, because I saw a proclamation a little before, forbidding public bonfires without leave of my lord mayor. It made some impressions upon me, that I thought they had got an intimation of our intention, and had therefore forbid that meeting. This therefore of the 17th of November being also disappointed, and my lord Shaftesbury, being told things were not ripe in the country, took shipping and got away; and from that time I heard no more of him till I heard he was dead. Now, Sir, after this we all began to lie under the same sense and apprehensions that my lord Shaftesbury did, that we had gone so far, and communicated it to so

many, that it was unsafe to make a retreat; and this being considered, it was also considered, that so great an affair as that was, consisting of such infinite particulars, to be managed with so much fineness, and to have so many parts, it would be necessary, that there should be some general council, that should take upon them the care of the whole. Upon these thoughts we resolved to erect a little Cabal among ourselves, which did consist of six persons; and the persons were, the duke of Monmouth, my lord of Essex, my lord Russell, Mr. Hambden, jun. Algernoone Sidney, and myself.

Att. Gen. About what time was this, when you settled this council?

Ld *Howard*. It would have been proper for me in the next place to tell you that, and I was coming to it. This was about the middle of Jan. last (as near as I can remember); for about that time we did meet at Mr. Hambden's house.

Att. Gen. Name those that met.

Ld. *Howard.* All the persons I named before; that was the duke of Monmouth, my lord of Essex, my lord Russell, col. Sidney, Mr Hambden, jun. and myself. When we met there, it was presently agreed what their proper province was, which was to have a care of the whole: and therefore it was necessary some general things should fall under our care and conduct, which could not possibly be conducted by individual persons. The things that did principally challenge this care, we thought were these: Whether the insurrection was most proper to be begun in London, or in the country, or both at one instant. This stood upon several different reasons: It was said in the country; and I remember the duke of Monmouth insisted upon it, that it was impossible to oppose a formed, well-methodized, and governed force, with a rabble hastily got together; and therefore whatever numbers could be gathered in the city, would be suppressed quickly, before they could form themselves: therefore it would be better to begin it at such a distance from the town, where they might have an opportunity of forming themselves, and would not be subject to the like panic fear, as in the town, where half an hour would convey the news to those forces that in another half hour would be ready to suppress them.

Att. Gen. Was this determined among you all?

Ld. *Howard.* In this manner that I tell you, why it was necessary to be done at some reasonable distance from the town. And from thence it was likewise considered, that the being so remote from the town, it would put the king upon this dilemma, that either the king would send his forces to subdue them, or not; if he did, he must leave the city naked, who being *proxim' dispositioni* to action, it would give them occasion to rise, and come upon the back of the king's forces; if he did not send, it would give them time to form their number, and be better ordered.

Att. Gen. My lord, we do not desire all your discourse and debates: what was your other general thing?

Ld. *Howard.* The other was, What countries and towns were the fittest and most disposed to action: and the third, what arms were necessary to be got, and how to be disposed. And a fourth, (which should have been indeed first in consideration) propounded by the duke of Monmouth, that it would be absolutely necessary to have some common bank of 25 or 30,000*l.* to answer the occasions of such an undertaking. Nothing was done, but these things were offered then to our consideration, and we were to bring in our united advice concerning them. But the last and greatest was, how he might so order it, as to draw Scotland into a consent with us; for we thought it necessary that all the diversion should be given. This was the last.

Att. Gen. Had you any other meetings?

Ld. *Howard.* We had, about ten days after this, at my lord Russell's.

Att. Gen. The same persons?

Ld. *Howard.* Every one of the same persons then meeting.

Att. Gen. What debate had you there?

Ld. *Howard.* Then it was so far, as we came to a resolution, That some persons should be sent to my lord Argyle, to settle an understanding with him; and that some messengers should be dispatched into Scotland, that should invite some persons hither, that were judged most able to understand the estate of Scotland, and give an account of it. The persons agreed on were sir John Cockram, my lord Melvile, and another whose name I have since been told upon my description, Sir —— Cambel. For this purpose we did order a person should be thought on that was fit—

Att. Gen. Do you know who was sent, and what was done upon this resolution?

Ld. *Howard* I have heard (I never saw him in six months before) that Aaron Smith was sent.

Att Gen Who was intrusted to take care of that business?

Ld. *Howard.* Col. Sidney. We in discourse did agree to refer it to colonel Sidney to have the care of sending a person.

Att. Gen. Who acquainted you Aaron Smith was sent?

Ld. *Howard.* Col. Sidney told me he had sent him, and given him sixty guineas for his journey.

Att. Gen. What more meetings had you?

Ld. *Howard.* We did then consider that these meetings might have occasioned some observation upon us, and agreed not to meet again till the return of that messenger. He was gone, I believe, near a month before we heard any thing of him, which we wondered at and feared some miscarriage; but if his letter had miscarried, it could have done no great hurt, for it carried only a kind of cant in it; it was under the disguise of a plantation in Carolina.

Att. Gen. You are sure my lord Russell was there?

Ld. *Howard.* Yes, Sir: I wish I could say he was not.

Att. Gen. Did he sit there as a cypher? What did my lord say?

Ld. *Howard.* Every one knows my lord Russell is a person of great judgment, and not very lavish in discourse.

Serj. *Jeff.* But he did consent?

Ld. *Howard.* We did not put it to the vote, but it went without contradiction, and I took it, that all there gave their consent.

Sol. Gen. The raising of money you speak of, was that put into any way?

Ld. *Howard.* No, but every man was to put themselves upon thinking of such a way, that money might be collected without administering jealousy.

Att. Gen. Were there no persons to undertake for a fund?

Ld. *Howard.* No, I think not. However, it was but opinion, the thing that was said was jocosely, rather than any thing else, that my lord of Essex had dealing in money, and therefore he was thought the most proper person to take care of those things; but this was said rather by way of mirth, than otherwise.

Att. Gen. What do you know else, my lord?

Ld. *Howard.* I was going to tell you, I am now at a full stop. For it was six weeks or more before Smith's return, and then drew on the time, that it was necessary for me to go into Essex, where I had a small concern; there I staid about three weeks; when I came back, I was informed that he was returned, and sir John Cockram was also come to town.

L. C. J. Did you meet after this?

Ld. *Howard.* No, my lord, I tell you, that I was forced to go three weeks upon the account of my estate, and afterwards I was necessitated to go to the Bath, where I spent five weeks; and the time of coming from the Bath to this time, is five weeks more; so that all this time hath been a perfect parenthesis to me, and more than this I know not.*

L. C. J. My lord Russell, Now, if your lordship pleases, is the time for you to ask him any questions.

Ld. *Russell.* The most he hath said of me, my lord, is only hear-say; the two times we met, it was upon no formed design, only to talk of news, and talk of things in general.

L. C. J. But I will tell you what it is he testifies, that comes nearest your lordship, that so you may consider of it, if you will ask any questions. He says, after my lord Shaftesbury went off (all before is but inducement, as to any thing that concerns your lordship, and does not particularly touch you; after his going away, he says) the party concerned with my lord Shaftesbury did think fit to make choice of six persons to carry on the design of an insurrection or rising, as he calls it, in the kingdom; and that to that purpose, choice was made of the duke of Monmouth, my lord of Essex, your lordship, my lord Howard, colonel Sidney, and Mr. Hambden.

Ld. *Russell.* Pray, my lord, not to interrupt you, by what party (I know no party) were they chosen?

Ld. *Howard.* It is very true, we were not chosen by community, but did erect ourselves by mutual agreement, one with another, into this society.

Ld. *Russell.* We were people that did meet very often.

L. C. J. Will your lordship please to have any other questions asked of my lord Howard?

Ld. *Russell.* He says, it was a formed design, when we met about no such thing.

L. C. J. He says, that you did consult among yourselves, about the raising of men, and where the rising should be first, whether in the city of London, or in more foreign parts, that you had several debates concerning it; he does make mention of some of the duke of Monmouth's arguments for its being formed in places from the city; he says, you did all agree, not to do any thing further in it, till you had considered how to raise money and arms: and to engage the kingdom of Scotland in this business with you, that it was agreed among you that a messenger should be sent into the kingdom of Scotland. Thus far he goes upon his own knowledge, as he saith; what he says after, of sending a messenger, is by report only.

Att. Gen. I beg your pardon, my lord.

L. C. J. It is so, that which he heard concerning the sending of Aaron Smith.

Att. Gen. Will you ask him any questions?

Ld. *Russell.* We met, but there was no debate of any such thing, nor putting any thing in method. But my lord Howard is a man that hath a voluble tongue, talks very well, and is full of discourse, and we were delighted to hear him.

Att. Gen. I think your lordship did mention the Cambells?

Ld. *Howard.* I did stammer it out, but not without a parenthesis, it was a person of the alliance, and I thought of the name of the Argyles.

* On a question as to the admissibility of evidence of confidential communications (as to which, see in this Collection the Duchess of Kingston's Case, A. D. 1776) lord Kenyon thus noticed this testimony of lord Howard: "If a friend would not reveal what was imparted to him in confidence, what is to become of many cases even affecting life, *e. g.* Dr. Ratcliff's Case. And if the privilege now claimed extended to all cases and persons, lord W. Russell died by the hands of an assassin and not by the hands of the law; for his friend lord Howard was permitted to give evidence of confidential conversations between them: all good men indeed thought that he should have gone almost all lengths rather than have betrayed that confidence; but still if the privilege had extended to such a case, it was the business of the Court to interfere and prevent the evidence being given." See Wilson *v.* Rastall, 4 T. Rep. 758, 9.

Ld. *Russell.* I desire your lordship to take notice, that none of these men I ever saw; my lord Melvile I have seen, but not upon this account.

Mr. *Atterbury* sworn.

Att. Gen. Aaron Smith did go, and Cambell he went for, is here taken. This is the messenger. Pray, what do you know of the apprehending of the Cambells?

Atterbury. If it please your lordship, I did not apprehend sir Hugh Cambell myself, but he is now in my custody; he was making his escape out of a woodmonger's house, both he and his son.

Att. Gen. How long did he own he had been at London?

Atterbury. Four days, and that in that time he had been at their lodgings; and that he and his son, and one Bailey, came to town together.

Att. Gen. My lord, we shall besides this (now we have fixed this upon my lord) give you an account, that these persons, that were to rise, always took them as their pay-masters, and expected their assistance. Mr. West, Mr. Keeling, and Mr. Leigh.

Mr. *West** sworn.

Att Gen. That which I call you to, is to know whether or no, in your managery of this Plot, you understood any of the lords were concerned, and which?

Mr. *West.* My lord, as to my lord Russell, I never had any conversation with him at all, but that I have heard this, that in the insurrection in November, Mr. Ferguson, and colonel Rumsey, did tell me, that my lord Russell intended to go down and take his post in the West, when Mr. Trenchard had failed them.

L. C. J. What is this?

Att. Gen. We have proved my lord privy to the consults; now we go about to prove the under-actors did know it.

West. They always said, my lord Russell was the man they most depended upon, because he was a person looked upon as of great sobriety.

Ld. *Russell.* Can I hinder people from making use of my name? To have this brought to influence the gentlemen of the jury, and inflame them against me, is hard.

L. C. J. As to this, the giving evidence by hear-say, will not be evidence; what colonel Rumsey or Mr. Ferguson told Mr. West, is no evidence.

Att. Gen. It is not evidence to convict a man, if there were not plain evidence before; but it plainly confirms what the other swears: but I think we need no more.

Serj. *Jeff.* We have evidence without it, and will not use any thing of garniture; we will leave it as it is, we won't trouble your lordship any further. I think, Mr. Attorney, we have done with our evidence.

* See what Burnet says of this man, at p. 498, of this volume.

L. C. J. My lord Russell, the king's counsel do think to rest upon this evidence that they have given against your lordship. I would put your lordship in mind of those things that are material in this case, and proved against your lordship. Here is colonel Rumsey does prove against your lordship this, That he was sent upon an errand, which in truth was traiterous; it was a traiterous errand sent from my lord Shaftesbury by him to that meeting. He does swear your lordship was at that meeting: and he delivered his errand to them, which was to know, what account could be given concerning the design of the insurrection at Taunton; and he says, your lordship being there, this return was made, that Mr. Trenchard had failed them in his undertaking in the business, and therefore my lord Shaftesbury must be contented, and sit down satisfied as to that time. Mr. Sheppard does likewise speak of the same time, that your lordship was there with the rest of the persons, the duke and others; that there was a discourse concerning an insurrection to have been made (though he is not so particular, as to the very notion of it; as colonel Rumsey is); as to the time they do agree.

Ld. *Russell.* Col. Rumsey is not positive that I said or heard any thing.

L. C. J. My lord, if you will have a little patience to hear me, I will tell you what it is presses you; there is this which I have mentioned; and Mr. Sheppard does say, there was a paper purporting a declaration then read among the company there, which was to be printed upon the rising, setting forth the oppressions and grievances of the nation; and then my lord Howard (after a great discourse concerning the many designs of my lord Shaftesbury) comes particularly to your lordship, and says, that six of you, as a chosen council among yourselves, (not that you were actually chosen, but as a chosen council among yourselves) did undertake to manage the great matter of the insurrection, and raising of men, in order to surprise the king's guards, and for to rise (which is a rebellion in the nation). He says, that you had several consults concerning it. I told you the several particulars of those consults he mentioned: now it is fit for your lordship, and it is your time, to give some answer to these things.

Ld. *Russell.* My lord, I cannot but think myself mighty unfortunate, to stand here charged with so high and heinous a crime, and that intricated and intermixed with the treasons and horrid practices and speeches of other people, the king's counsel taking all advantages, and improving and heightening things against me. I am no lawyer, a very unready speaker, and altogether a stranger to things of this nature, and alone, and without counsel. Truly, my lord, I am very sensible, I am not so provided to make my just defence, as otherwise I should do. But, my lord, you are equal, and the gentlemen of the jury, I think, are men of consciences; they are strangers to me, and I

hope they value innocent blood, and will consider the witnesses that swear against me, swear to save their own lives; for howsoever legal witnesses they may be accounted, they can't be credible. And for col. Rumsey, who it is notoriously known hath been so highly obliged by the king, and the duke, for him to be capable of such a design of murdering the king, I think nobody will wonder, if to save his own life, he will endeavour to take away mine; neither does he swear enough to do it; and then if he did, the time, by the 13th of this king, is elapsed, it must be, as I understand by the law, prosecuted within six months; and by the 25 E. 3, a design of levying war is no treason, unless by some overt-act it appear. And, my lord, I desire to know, what statute I am to be tried upon; for generals, I think, are not to be gone upon in these cases.

L. C. J. (To the Attorney General.) Mr. Attorney, you hear what it is my lord objects to this evidence; he says, that as to those witnesses that testify any thing concerning him, above six months before he was prosecuted, he conceives the act of parliament, upon which he takes himself to be indicted, does not extend to it; for that says, that within six months there ought to have been a prosecution; and my lord tells you, that he is advised, that a design of levying war, without actual levying of war, was not treason before that statute.

Att. Gen. To satisfy my lord he is not indicted upon that statute, we go upon the 25 E. 3. But then for the next objection, surely my lord is informed wrong. To raise a rebellion, or a conspiracy, within the kingdom, is not that which is called levying of war in that statute, but to raise a number of men, to break prisons, &c. which is not so directly tending against the life of the king. To prepare forces to fight against the king, that is a design, within that statute, to kill the king; and to design to depose the king, to imprison the king, to raise the subjects against the king, these have been settled by several resolutions to be within that statute, and evidences of a design of killing the king.

Ld. Russell. My lord, this is a matter of law; neither was there but one meeting at Mr. Sheppard's house.

Att. Gen. My lord, if you admit the fact, and will rest upon the point of law, I am ready to argue it with any of your counsel. I will acquaint your lordship how the evidence stands. There is one evidence since Christmas last.

Ld. Russell. That's not to the business of Sheppard's house. My lord, one witness will not convict a man of treason.

Att. Gen. If there be one witness of one act of treason, and another of a second, another of a third, that manifest the same treason to depose or destroy the king, that will be sufficient.

L. C. J. My lord, that has been resolved: the two witnesses the statute requires are not to the same individual act, but to the same treason; if they be several acts declaring the same treason, and one witness to each of them, they have been reckoned two witnesses within the statute of Edw. 3.

Serj. *Jeff.* If my lord will call his witness—

Ld. Russell. This is tacking of two treasons together; here is one in November by one witness, and then you bring on another with a discourse of my lord Howard, and he says the discourse passed for pleasure.

L. C. J. If your lordship do doubt whether the fact proved against your lordship be treason or not within the statute of E. 3, and you are contented that the fact be taken as proved against your lordship, and so desire counsel barely upon that, that is matter of law, you shall have it granted.

Ld. Russell. I am not knowing in the law. I think it is not proved; and if it was, I think its not punishable by that act. I desire counsel may be admitted upon so nice a point My life lies at stake, here's but one witness that speaks of a message.

Serj. *Jeff.* The fact must be left to the jury; therefore if my lord Russell hath any witnesses to call in opposition to these matters, let him.

L. C. J. My lord, there can be no matter of law, but upon a fact admitted and stated.

Ld. Russell. My lord, I do not think it proved. I hope you will be of counsel for me; it is very hard for me, that my counsel may not speak for me in a point of law.

L. C. J. My lord, to hear your counsel concerning this fact, that we cannot do, it was never done, nor will be done. If your lordship doubts whether this fact is treason or not, and desires your counsel may be heard to that, I will do it.

Ld. Russell. I doubt in law, and do not see the fact is proved upon me.

Sol. Gen. Will your lordship please to call any witness to the matter of fact?

Ld. Russell. It is very hard a man must lose his life upon hear-say. Colonel Rumsey says he brought a message, which I will swear I never heard nor knew of. He does not say he spake to me, or I gave him any answer. Mr. Sheppard remembers no such thing: he was gone to and again. Here is but one witness, and seven months ago.

Att. Gen. My lord, if there be any thing that is law, you shall have it.

Ld. Russell. My lord, colonel Rumsey the other day before the king, could not say, that I heard it, I was in the room, but I came in late, they had been there a good while; I did not stay above a quarter of an hour tasting sherry with Mr. Sheppard.

L. C. J. Read the Statute of 25 E. 3. c. 2. My brothers desire to have it read.

Cl. of Cr. 'Whereas divers opinions have 'been before this time, in what case treason 'shall be said, and in what not: The king, at 'the request of the Lords, and of the Com'mons, hath made a declaration in the man'ner as hereafter followeth: that is to say,

'when a man doth compass or imagine the 'death of our lord the king, or of our lady his 'queen, or of their eldest son and heir; or if a 'man do violate the king's companion, or the 'king's eldest daughter unmarried, or the wife 'of the king's eldest son and heir; or if a man 'do levy war against our lord the king, in his 'realm, or be adherent to the king's enemies in 'his realm, giving to them aid and comfort in 'the realm, or elsewhere, and thereof be prov- 'able attainted of open deed by people of their 'condition: and if a man counterfeit the king's 'great or privy seal, or his money: and if a 'man bring false money into this realm, coun- 'terfeit to the money of England, as the money 'called Lushburgh, or other like to the said 'money of England, knowing the money to 'be false, to merchandise, or make payment in 'defecit of our said lord the king, and of his 'people: and if a man slea the chancellor, 'treasurer, or the king's justices of the one 'bench or the other, justices in eyre, or justices 'of assize, and all other justices designed to 'hear and determine, being in their places 'during their offices. And it is to be under- 'stood, that in the cases above rehearsed, that 'ought to be judged treason, which extends to 'our lord the king, and his royal majesty.'

L. C. J. My lord, that which is urged against you by the king's counsel, is this, You are accused by the indictment of compassing and designing the king's death, and of endeavouring to raise an insurrection in order to it; that that they do say is, that these counsels that your lordship hath taken, are evidences of your compassing the king's death, and are overt-acts declaring the same; and upon that it is they insist your lordship to be guilty within that statute.

Ld. *Russell.* It is in a point of law, and I desire counsel.

Att. Gen. Admit your consultations, and we will hear them.

L. C. J. I would set your lordship right, for probably you may not apprehend the law in this case; if your counsel be heard, they must be heard to this, that taking it, that my lord Russell has consulted in this manner, for the raising of forces within this kingdom, and making an insurrection within this kingdom, as colonel Rumsey and my lord Howard have deposed, whether then this be treason, we can hear your counsel to nothing else.

Ld. *Russell.* I do not know how to answer it. The point methinks must be quite otherwise, that there should be two witnesses to one thing at the same time*.

Att. Gen. Your lordship remembers, in my lord Stafford's case, there was but one witness to one act in England, and another to another in France.

Ld. *Russell.* It was to the same point.

Att. Gen. To the general point, the lopping point.

Serj. *Jefferies.* There was not so much evidence against him, as there is against your lordship.

L. C. J. My lord, if your lordship will say any thing, or call any witnesses to disprove what either of these gentlemen have said, we will hear your lordship what they say: but if you cannot contradict them by testimony, it will be taken to be a proof. And the way you have to disprove them, is to call witnesses, or by asking questions, whereby it may appear to be untrue.

Sol. Gen. If you have any witnesses, call them, my lord.

Ld. *Russell.* I do not think they have proved it. But then it appears by the statute, that levying war is treason, but a conspiracy to levy war is no treason; if nothing be done, it is not levying war within the statute. There must be manifest proof of the matter of fact, not by inference.

Att. Gen. I see that is taken out of my lord Coke. Levying war is a distinct branch of the statute; and my lord Coke explains himself afterwards, and says, it is an assuming of royal power, to raise for particular purposes.

Just. *Withins.* Unless matter of fact be agreed, we can never come to argue the law.

Ld. *Russell.* I came in late.

Sol. Gen. Pray, my lord, has your lordship any witnesses to call as to this matter of fact.

Ld. *Russell.* I can prove I was out of town when one of the meetings was; but Mr. Sheppard cannot recollect the day, for I was out of town all that time. I never was but once at Mr. Sheppard's, and there was nothing undertaken of viewing the guards while I was there. Col. Rumsey, can you swear positively, that I heard the message, and gave any answer to it?

L. C. J. (To Colonel Rumsey) Sir, did my lord Russell hear you when you delivered the message to the company? Were they at the table, or where were they?

Col *Rumsey.* When I came in they were standing at the fire-side; but they all came from the fire-side to hear what I said.

Ld. *Russell.* Colonel Rumsey was there when I came in.

Col. *Rumsey.* No, my lord. The duke of Monmouth, and my lord Russell, went away together; and my lord Grey, and sir Thomas Armstrong.

Ld. *Russell.* The duke of Monmouth and I came together, and you were standing at the chimney when I came in; you were there before me. My lord Howard hath made a long narrative here of what he knew. I do not know when he made it, or when he did recollect any thing; 'tis but very lately, that he did declare and protest to several people, that he knew nothing against me, nor of any Plot I could in the least be questioned for.

L. C. J. If you will have any witnesses called to that, you shall, my lord.

* See the Resolutions of the Judges in Lord Stafford's Case, vol. 7, p. 1527, of this Collection. See, too, East's Pleas of the Crown, c. 2, s. 63, 64, 65.

Ld. *Russell.* My lord Anglesey, and Mr. Edward Howard.

My Lord *Anglesey* stood up.

L. C. J. My lord Russell, what do you ask my lord Anglesey?

Lord *Russell.* To declare what my lord Howard told him about me, since I was confined.

Ld. *Anglesey.* My lord, I chanced to be in town the last week; and hearing my lord of Bedford was in some distress and trouble concerning the affliction of his son, I went to give him a visit, being my old acquaintance, of some 53 years standing, I believe; for my lord and I were bred together at Maudlin-College in Oxon; I had not been there but a very little while, and was ready to go away again, after I had done the good office I came about; but my lord Howard came in, I don't know whether he be here.

Ld. *Howard.* Yes, here I am to serve your lordship.

Ld. *Anglesey.* And sat down on the other side of my lord of Bedford, and he began to comfort my lord; and the arguments he used for his comfort, were, My lord, you are happy in having a wise son, and a worthy person, one that can never sure be in such a Plot as this, or suspected for it, and that may give your lordship reason to expect a very good issue concerning him. I know nothing against him, or any body else, of such a barbarous design, and therefore your lordship may be comforted in it. I did not hear this only from my lord Howard's mouth, but at my own home upon the Monday after, for I use to go to Totteridge for fresh air; I went down on Saturday, this happened to be on Friday (my lord being here, I am glad, for he cannot forget this discourse); and when I came to town on Monday, I understood that my lord Howard upon that very Sunday had been at church with my lady Chaworth. My lady has a chaplain, it seems, that preaches there, and does the offices of the church; but my lady came to me in the evening. This I have from my lady——

L. C. J. My lord, what you have from my lady is no kind of evidence at all.

Ld. *Anglesey.* I don't know what my lord is, I am acquainted with none of the evidence, nor what hath been done: But my lady Chaworth came to me, and acquainted me, there was some suspicion——

Serj. *Jefferies.* I don't think it fit for me to interrupt a person of your honour, my lord, but your lordship knows in what place we stand here: What you can say of any thing you heard of my lord Howard we are willing to hear, but the other is not evidence. As the court will not let us offer hearsays, so neither must we that are for the king permit it*.

* "But the court did let them offer hearsays; for lord Howard went on with hearsay evidence, even after lord Russell complained of it, p. 608." Note in former Edition.

Ld. *Anglesey.* I have told you what happened in my hearing.

Then Mr. *Howard* stood up.

L. C. J. Come, Mr. Howard, what do you know?

Mr. *Howard.* I must desire to say something of myself and my family first: My lord and I have been very intimate, not only as relations, but as dear friends. My lord, I have been of a family known to have great respect and duty for the king; and I think there is no family in the nation so numerous, that hath expressed greater loyalty; upon which account I improved my interest in my lord Howard; I endeavoured, upon the great misunderstanding of the nation, (if he be here, he knows it) to persuade him to apply himself to the king, to serve him in that great difficulty of state, which is known to all the world. I sometimes found my lord very forward, and sometimes I softened him; upon which parly, and upon his permission, and more upon my own inclination of duty, I made several applications to ministers of state, (and I can name them) that my lord Howard had a great desire of serving the king in the best way of satisfaction, and particularly in the great business of his brother. I wondered there should be so much sharpness for a matter of opinion, and I told my lord so, and we had several disputes about it. My lord, I do say this before I come to the thing. After this I did partly by his permission, and partly by my own inclination to serve the king, because I thought my lord Howard to be a man of parts, and saw him a man that had interest in the nation, tell my lord Feversham, that I had prevailed with a relation of mine, that may be he might think opposite, that perhaps might serve the king in this great difficulty that is emergent, and particularly that of his brother. My lord Feversham did receive it very kindly, and I wrote a letter to him to let him know how I had softened my lord, and that it was my desire he should speak with my lord at Oxon. My lord Feversham gave me a very kind account when he came again, but he told me——

L. C. J. Pray apply yourself to the matter you are called for.

Mr. *Howard.* This it may be is to the matter, when you have heard me; for I think I know where I am, and what I am to say.

L. C. J. We must desire you not to go on thus.

Mr. *Howard.* I must satisfy the world, as well as I can, as to myself, and my family, and pray do not interrupt me. After this, my lord, there never passed a day for almost——

L. C. J. Pray speak to this matter.

Mr. *Howard.* Sir, I am coming to it.

L. C. J. Pray, Sir, be directed by the court.

Mr. *Howard.* Then now, Sir, I will come to the thing. Upon this ground I had of my lord's kindness, I applied myself to my lord in this present issue, on the breaking out of this Plot. My lord, I thought certainly, as near

as I could discern him, (for he took it upon his honour, his faith, and as much as if he had taken an oath before a magistrate) that he knew nothing of any man concerned in this business, and particularly of my lord Russell, whom he vindicated with all the honour in the world. My lord, it is true, was afraid of his own person, and as a friend and a relation, I concealed him in my house, and I did not think it was for such a conspiracy, but I thought he was unwilling to go to the Tower for nothing again. So that if my lord Howard has the same soul on Monday, that he had on Sunday, this cannot be true, that he swears against my lord Russell. This I say upon my reputation, and honour; and something I could say more, he added, he thought my lord Russell did not only unjustly suffer, but he took God and men to witness, he thought him the worthiest person in the world. I am very sorry to hear any man of my name should be guilty of these things.

Ld. *Russell.* Call Dr. Burnet. Pray, Dr. Burnet, did you hear any thing from my lord Howard, since the Plot was discovered, concerning me?

Dr. *Burnet.* My lord Howard was with me the night after the Plot broke out, and he did then, as he had done before, with hands and eyes lifted up to heaven, say he knew nothing of any Plot, nor believed any; and treated it with scorn and contempt.

Ld *Howard.* My lord, may I speak for myself?

Serj *Jeff.* No, no, my lord, we don't call you.

L. C. J Will you please to have any other witnesses called?

Ld *Russell.* There are some persons of quality, that I have been very well acquainted and conversed with, I desire to know of them, if there was any thing in my former carriage, to make them think me like to be guilty of this? My lord Cavendish

L. *Cavendish.* I had the honour to be acquainted with my lord Russell a long time. I always thought him a man of great honour, and too prudent and wary a man to be concerned in so vile and desperate a design as this, and from which he would receive so little advantage: I can say nothing more, but that two or three days since the discovery of this plot, upon discourse about colonel Rumsey, my lord Russell did express something, as if he had a very ill opinion of the man, and therefore it is not likely he would entrust him with such a secret.

L. *Russell.* Dr. Tillotson. [He appears.

L. C. J. What questions would you ask him, my lord?

L. *Russell.* He and I happened to be very conversant. To know whether he did ever find any thing tending to this in my discourse.*

L. C. J. My lord calls you as to his life, and conversation, and reputation.

Dr. *Tillotson.* My lord, I have been many years last past acquainted with my lord Russell, I always judged him a person of great virtue and integrity, and by all the conversation and discourse I ever had with him, I always took him to be a person very far from any such wicked design he stands charged with.

L. *Russell.* Dr. Burnet, if you please to give some account of my conversation.

Dr. *Burnet.* My lord, I have had the honour to be known to my lord Russell several years, and he hath declared himself with much confidence to me, and he always upon all occasions expressed himself against all risings; and when he spoke of some people that would provoke to it, he expressed himself so determined against that matter that I think no man could do more.

L. C. J. Will your lordship call any other witnesses?

L. *Russell.*. Dr. Cox.

Dr. *Thomas Cox* stood up.

Dr. *Cox.* My lord, I did not expect to have been spoken to upon this account. Having been very much with my lord of late, that is, for a month or six weeks before this plot came out, I have had occasion to speak with my lord in private, about these public matters: But I have always found that my lord was against all kind of risings, and thought it the greatest folly and madness, till things should come in a parliamentary way. I have had occasion often to speak with my lord Russell in private, and having myself been against all kind of risings, or any thing that tended to the disorder of the public, I have heard him profess solemnly, he thought it would ruin the best cause in the world to take any of these irregular ways for the preserving of it; and particularly my lord hath expressed himself occasionally of these two persons, my lord Howard and colonel Rumsey: One of them, colonel Rumsey, I saw once at my lord's house, and he offered to speak a little privately. But my lord told me he knew him but a little: I told him he was a valiant man, and acted his part valiantly in Portugal. He said he knew him little, and that he had nothing to do with him, but in my lord Shaftesbury's business: He said, for my lord Howard, he was a man of excellent parts, of luxuriant parts, but he had the luck not to be much trusted by any party, And I never heard him say one word of indecency or immodesty towards the king.

L. *Russell.* I would pray the duke of Somerset to speak what he knows of me.

D. of *Somerset.* I have known my lord Russell for about two years, and have had much conversation with him, and been often in his company, and never heard any thing from him, but what was very honourable, loyal, and just.

L. C. J. My lord does say, that he has

* See the admissibility of evidence of this sort considered in the arguments as to the admission of the "Letter to lord Ashburton," on the fourth day of the Trial of Mr. Horne Tooke, A. D. 1694, in this Collection.

known my lord Russell for about two years, and hath had much conversation with him, and been much in his company, and never heard any thing from him, but what was honourable, and loyal, and just in his life.

Foreman of the Jury. The gentlemen of the jury desire to ask my lord Howard something upon the point my lord Anglesey testified, and to know what answer he makes to my lord Anglesey.

L. C. Baron. My lord, what say you to it, that you told his father he was a discreet man, and he needed not to fear his engagement in any such thing?

Ld. *Howard.* My lord, if I took it right, my lord Anglesey's testimony did branch itself into two parts, one of his own knowledge, and the other by hearsay: as to what he said of his own knowledge, when I waited upon my lord of Bedford, and endeavoured to comfort him, concerning his son, I believe I said the words my lord Anglesey has given an account of, as near as I can remember, that I looked upon his lordship, as a man of that honour, that I hoped he might be secure, that he had not entangled himself in any thing of that nature. My lord, I can hardly be provoked to make my own defence, lest this noble lord should suffer, so willing I am to serve my lord, who knows I cannot want affection for him. My lord, I do confess I did say it; for your lordship well knows under what circumstances we were: I was at that time to outface the thing, both for myself and my party, and I did not intend to come into this place, and act this part. God knows how it is brought upon me, and with what unwillingness I do sustain it; but my duty to God, the king, and my country, requires it; but I must confess I am very sorry to carry it on thus far. My lord, I do confess I did say so, and if I had been to visit my lord Pemberton, I should have said so. There is none of those that know my lord Russell, but would speak of my lord Russell, from those topics of honour, modesty, and integrity, his whole life deserves it, And I must confess, I did frequently say, there was nothing of truth in this, and I wish this may be for my lord's advantage. My lord, will you spare me one thing more, because that leans hard upon my reputation; and if the jury believe that I ought not to be believed, for I do think the religion of an oath is not tied to a place, but receives its obligation from the appeal we therein make to God, and, I think, if I called God and Angels to witness to a falshood, I ought not to be believed now: but I will tell you as to that; your lordship knows, that very man that was committed, was committed for a design of murdering the king; now I did lay hold on that part, for I was to carry my knife close between the paring and the apple; and I did say, that if I were an enemy to my lord Russell, and to the duke of Monmouth, and were called to be a witness, I must have declared in the presence of God and man, that I did not believe either of them had any design to murder the king. I have said this, because I would not walk under the character of a person, that would be perjured at the expence of so noble a person's life, and my own soul.

Ld. *Russell.* My lord Clifford.

L. C. J. What do you please to ask my lord Clifford?

Ld. *Russell.* He hath known my conversation for many years.

Ld. *Clifford.* I always took my lord to be a very worthy honest man; I never saw any thing in his conversation to make me believe otherwise.

Ld. *Russell.* Mr. Gore.

Mr. *Luton Gore.* I have been acquainted with my lord several years, and conversed much with him; in all the discourse I had with him, I never heard him let any thing fall, that tended in the least to any rising, or any thing like it; I took him to be one of the best sons, one of the best fathers, and one of the best masters, one of the best husbands, one of the best friends, and one of the best christians we had. I know of no discourse concerning this matter

Ld. *Russell.* Mr. Spencer, and Dr. Fitz-Williams.

Mr. *Spencer.* My lord, I have known my lord Russell many years, I have been many months with him in his house; I never saw any thing by him, but that he was a most virtuous and prudent gentleman, and he had prayers constantly twice a day in his house.

L. C. J. What, as to the general conversation of his life? my lord asks you, whether it hath been sober?

Mr. *Spencer.* I never saw any thing but very good, very prudent, and very virtuous.

Ld. *Russell.* What company did you see used to come to me?

Mr. *Spencer.* I never saw any but his near relations, or his own family. I have the honour to be related to the family.

Then Dr. *Fitz-Williams** stood up.

Ld. *Russell.* If it please you, doctor, you have been at my house several times, give an account of what you know of me.

Dr. *Fitz-Williams.* I have had the knowledge of my lord these 14 years, from the time he was married to his present lady, to whose father, eminent for loyalty, I had a relation by service; I have had acquaintance with him both at Stratton, and Southampton Buildings; and by all the conversation I had with him, I esteemed him a man of that virtue, that he could not be guilty of such a crime as the conspiracy he stands charged with.

* He had been chaplain to the earl of Southampton, the father of Lord Russell's wife Lady Rachel. By her he was much esteemed, and the greater part of the published collection of Letters of Lady Rachel Russell, consists of correspondence between them. After the Revolution he was deprived of his canonry of Windsor and other preferment for not taking the oaths to King William and Queen Mary.

L. C. J. My lord, does your lordship call any more witnesses?

Ld. *Russell.* No, my lord, I will be very short. I shall declare to your lordship, that I am one that have always had a heart sincerely loyal and affectionate to the king, and the government, the best government in the world. I pray as sincerely for the king's happy and long life as any man alive; and for me to go about to raise a rebellion, which I looked upon as so wicked and unpracticable, is unlikely. Besides, if I had been inclined to it, by all the observation I made in the country, there was no tendency to it. What some hot headed people have done there, is another thing. A rebellion cannot be made now as it has been in former times; we have few great men.* I was always for the government, I never desired any thing to be redressed, but in a parliamentary and legal way. I have been always against innovations, and all irregularities whatsoever; and shall be as long as I live, whether it be sooner or later. Gentlemen, I am now in your hands eternally, my honour, my life, and all; and I hope the heats and animosities that are amongst you will not so bias you, as to make you in the least inclined to find an innocent man guilty. I call to witness heaven and earth, I never had a design against the king's life in my life, nor never shall have. I think there is nothing proved against me at all. I am in your hands. God direct you.

Sol. Gen. My lord, and you gentlemen of the jury, the prisoner at the bar stands indicted for high treason, in conspiring the death of the king. The overt-act that is laid to prove that conspiracy and imagination by, is the assembling in council to raise arms against the king, and raise a rebellion here. We have proved that to you by three witnesses. I shall endeavour as clearly as I can, to state the substance of the evidence to you, of every one of them, as they have delivered it.

The first witness, colonel Rumsey, comes, and he tells you of a message he was sent of to Mr. Sheppard's house to my lord Russell, with several other persons, who he was told would be there assembled together: And the message was to know what readiness they were in, what resolutions they were come to concerning the rising at Taunton? By this you do perceive, that this conspiracy had made some progress, and was ripe to be put in action. My lord Shaftesbury, that had been a great contriver in it, he had pursued it so far as to be ready to rise. This occasioned the message from my lord Shaftesbury to my lord Russell, and those noble persons that were met at Mr. Sheppard's house, to know what the resolution was concerning the business of Taunton, which you have heard explained by an undertaking of Mr. Trenchard's: That the answer was, they were disappointed there, and they could not then be ready, and that my lord Shaftesbury must be content. This message was delivered in presence of my lord Russell; the messenger had notice my lord Russell was there; the answer was given as from them all, that at present they could not be ready because of that disappointment. Colonel Rumsey went farther, and he swears there was a discourse concerning the surprising of the guards; and the duke of Monmouth, my lord Grey, and sir Thomas Armstrong went to see what posture they were in, whether it were feasible to surprise them, and they found them very remiss; and that account they brought back, as is proved to you by Mr. Sheppard the other witness, that it was a thing very feasible. But to conclude with the substance of Colonel Rumsey's evidence, he says, my lord was privy to it, that he had discourse among the rest of it, though my lord was not a man of so great discourse as the rest, and did talk of a rising. He told you there was a rising determined to be on the 19th of November last, which is the substance of Colonel Rumsey's evidence.

Gentlemen, the next witness is Mr. Sheppard, and his evidence was this: He swears that about October last, Mr. Ferguson came to him of a message from the duke of Monmouth, to let him know that he and some other persons of quality would be there that night; that accordingly they did meet, and my lord Russell was there likewise; that they did desire to be private, and his servants were sent away; and that he was the man that did attend them. He swears there was a discourse concerning the way and method to seize the guards; he goes so far, as to give an account of the return of the errand the duke of Monmouth, my lord Grey, and sir Thomas Armstrong, went upon, that it was feasible, if they had strength to do it. Then he went a little farther, and he told you there was a paper read that in his evidence does not come up to my lord Russell; for he did not say my lord Russel was by, and I would willingly repeat nothing but what concerns the prisoner. This therefore colonel Rumsey, and Mr. Sheppard, agree in, that there was a debate among them how to surprise the guards, and whether that was feasible; and Mr. Sheppard is positive as to the return made upon the view.

The next witness was my lord Howard: He gives you an account of many things, and many things that he tells you are by hear-say. But I cannot but observe to you, that all this hearsay is confirmed by these two positive witnesses, and their oaths agree with him in it; for my lord Shaftesbury told him of the disappointment he had met with from these noble persons that would not join with him; and then he went from my lord Shaftesbury to the duke of Monmouth, to expostulate with him about it, (for my lord Shaftesbury then was ready to be in action) and that the duke said he always told him he would not engage at that time: This thing is confirmed to you by two witnesses. Colonel Rumsey says, when he brought the message from my lord

* According to Dalrymple, "There are now no great men left in England."

tesbury, the answer was, they were not ready, my lord must be contented.

Next he goes on with a discourse concerning my lord Shaftesbury, (that does not immediately come up to the prisoner at the bar, but it manifests there was a design at that time) he had 10,000 brisk boys (as he called them) ready to follow him upon the holding up his finger: But it was thought not so prudent to begin it, unless they could join all their forces; So you hear in this they were disappointed; and partly by another accident too, my lord Howard had an apprehension it might be discovered; that was upon the proclamation that came out forbidding bonfires, to prevent the ordinary tumults that used to be upon those occasions. Then my lord Howard goes on, and comes particularly to my lord Russell: for upon this disappointment, you find, my lord Shaftesbury thought fit to be gone. But after that, the design was not laid aside; for you hear, they only told him all along, they could not be ready at that time, but the design went on still to raise arms, and then they took upon themselves to consult of the methods of it; and for the carrying it on with the greater secrecy, they chose a select council of six, which were the duke of Monmouth, my lord of Essex, my lord Howard, my lord Russell, Mr. Hambden, and colonel Sidney. That accordingly they met at Mr. Hambden's, (there was their first meeting) and their consultation there was, how the insurrection should be made, whether first in London, or whether first in the country, or whether both in London and in the country at one time. They had some debates among themselves, that it was fittest first to be in the country; for if the king should send his guards down to suppress them, then the city, that was then as well disposed to rise, would be without a guard, and easily effect their designs here.

Their next meeting was at my lord Russell's own house, and there their debates were still about the same matter, how to get in Scotland to their assistance; and in order to that, they did intrust col. Sidney, one of their council, to send a messenger into Scotland for some persons to come hither, my lord Melvile, sir Hugh Cambell, and sir John Cockram. Accordingly col. Sidney sends Aaron Smith (but this is only what col. Sidney told my lord afterwards, that he had done it;) but you see the fruit of it. Accordingly they are come to town and sir Hugh Cambell is taken by a messenger upon his arrival; and he had been but four days in town, and he had changed his lodging three times.

Now, gentlemen, this is the substance of the evidence that hath been produced against my lord Russell. My lord Russell hath made several objections, that he was accidentally at this meeting at Mr. Sheppard's house, and came about other business; but I must observe to you, that my lord Russell owned, that he came along with the duke of Monmouth, and, I think he said, he went away with him too. You observe what Mr. Sheppard's evidence was: Mr. Ferguson came to tell him the duke of Monmouth would come; and accordingly the duke of Monmouth did come, and brought his companion along with him, which was my lord Russell and certainly they that met upon so secret an affair, would never have brought one that had not been concerned. Gentlemen, there are other objections my lord hath made, and those are in point of law; but before I come to them, I would observe what he says to the second meeting. My lord does not deny, but that he did meet both at Mr. Hambden's house, and my lord's own; I think my lord said they did meet only to discourse of news; and my lord Howard being a man of excellent discourse, they met for his conversation. Gentlemen, you can't believe that this designed meeting was for nothing; in this close secret meeting, that they had no contrivance among them. You have heard the witness, he swears positively what the conversation was, and you see the fruit of it, sir Hugh Cambell's coming to town, and absconding, when it is discovered. Now my lord Russell insists upon it, that admitting these facts be proved upon him, they amount to no more than to a conspiracy to levy war, and that that is not treason within the Statute of 25 E. 3, and if it be only within the statute of the 13 of this king, then it is out of time, that directs the prosecution to be within six months: The law is plainly otherwise. The Statute of the 13th of this king I will not now insist upon, though I believe if that be strictly looked into, the clause that says the prosecution shall be within six months, does not refer to treason, but only to the other offences that are highly punishable by that Statute. For the proviso runs thus:

'13 Car. 2. Provided always, that no person 'be prosecuted for any of the offences in this 'act mentioned, other than such as are made 'and declared to be high treason, unless it be 'by order of the king's majesty, his heirs or 'successors, under his or their sign manual, 'or by order of the council table of his majesty, 'his heirs or successors, directed unto the attorney general for the time being, or some 'other council learned to his majesty, his 'heirs or successors, for the time being: Nor 'shall any person or persons, by virtue of this 'present act, incur any the penalties herein 'before mentioned, unless he or they be prosecuted within six months next after the offence committed and indicted thereupon within 'three months after such prosecution; any 'thing herein contained to the contrary not'withstanding.'

This word (nor) is a continuation of the former sentence, and the exception of high treason will go through all, and except that out of the temporary limitation of treason: but this is high treason within 25 E. 3. To conspire to levy war, is an overt-act to testify the design of the death of the king. And the error of my lord Coke hath possibly led my lord into this mistake. But this, gentlemen,

hath been determined; it was resolved by al the judges in the case of my lord Cobham 1 Jac. A conspiracy to levy war against the king's person, (as this was a conspiracy to seize the guards) what does that tend to but to seize the king? And that always hath been taken to be high treason. But there are some things called levying of war in law, that are not so directly against the king, as if a number of men go about to levy men to overthrow all inclosures, this by the generality of the intent, and because of the consequences, is accounted levying war against the king. A conspiracy therefore to levy such a war, which by construction only is against the king, perhaps that may not be such an overt-act, as to testify the imagination of the death of the king; but other conspiracies to raise war against the king have always so been taken. It is the resolution of all the judges in my lord Dyer's reports, the case of Dr. Story: A conspiracy to invite a foreign prince to make an invasion, though no invasion follow, is an overt-act to prove the conspiring the death of the king; and as it has been so taken, so it hath been practised but of late days. In the King's-bench I take it the indictment against Plunket that was hanged, he was indicted for conspiring against the life of the king, and his charge went no farther than for raising of arms, and inviting the French king in, and he suffered. This is acknowledged by my lord Coke; for he himself said in the paragraph before that out of which this advice to my lord Russel is extracted, that a conspiracy to invite a foreign prince to invade the kingdom, is a conspiracy against the life of the king. And in the next paragraph, he says an overt-act of one treason cannot be an overt-act of another treason. But constant practice is against him in that: for what is more common than to indict a man for imagining the death of the king, and to assign the overt-act in a conspiracy to raise arms against the king? And sometimes they go on and say, Did levy war against the king. Now by my lord Coke's rule levying war, unless the indictment be particular for that, is not an overt-act for the compassing the death of the king; but the contrary hath been resolved by all the judges, in the case of sir Henry Vane, and it is the constant practice to lay it so in indictments. It would be a strange construction, if this should not be high treason. It is agreed by every body, to take the king prisoner, to seize the king, that is a compassing of the death of the king; and to sit in council to conspire to effect that, that is an overt-act of the imagination of the death of the king: now no man can distinguish this case from that: and this consultation amounted to all this, for plainly thither it tended. The consultation was to seize upon the king's guards; that could have no other stop but to seize upon the king's person, and bring him into their power. As to the killing of the king, I am apt to think that was below the honour of the prisoner at the bar; but this is equal treason: if they designed only to bring the king into their power, till he had consented to such things as should be moved in parliament, it is equally treason as if they had agreed directly to assassinate him. Therefore I think there is nothing for you to consider, but to see that the fact be fully proved; and I see nothing that hath been said by my lord Russell, that does invalidate our evidence. He hath produced several witnesses, persons of honour; my lord Anglesey he tells you of a discourse my lord Howard had with my lord of Bedford; that he told my lord of Bedford that he needed not to fear, for he had a wise and understanding son, and could not think he should be guilty of any such thing as was laid to his charge. This is brought to invalidate my lord Howard's testimony. Gentlemen, do but observe, my lord Howard was as deep in as any of them, and was not then discovered: is it likely, that my lord Howard, that lay hid, should discover to my lord of Bedford, that there was a conspiracy to raise arms, and that he was in it? This would have been an aspersion upon my lord of Bedford, that any such thing should have been said.

Mr. Edward Howard is the next, and he proves, That my lord Howard used solemn protestations, that he knew nothing of this conspiracy. I did observe that worthy gentleman in the beginning of his discourse (for it was pretty long) said first, that he had been several times tempting my lord Howard to come over and be serviceable to the king; and if he knew any thing, that he would come and confess it. Why gentlemen, Mr. Howard, that had come to him upon these errands formerly, and had thought he had gained him, I conceive you do not wonder if my lord Howard did not reveal himself to him, who presently would have discovered it, for for that errand he came. But if my lord had had a design to have come in and saved his life, he would have made his submission voluntarily, and made his discovery; but my lord tells nothing till he is pinched in his conscience, and confounded with the guilt, (being then in custody) and then he tells the whole truth, that which you have heard this day.

Gentlemen, this hath been all that hath been objected against the witnesses, except what is said by Dr. Burnet; and, he says, that my lord Howard declared to him, that he believed there was no Plot, and laughed at it. Why, gentlemen, the Doctor would take it ill to be thought a person fit to be intrusted with the discovery of this; therefore what he said to him signifies nothing, for it is no more than this, that he did not discover it to the Doctor.

But the last objection (which I see there has been a great many persons of honour and quality called to) is, that it is not likely my lord Russell should be guilty of any thing of this kind, being a man of that honour, virtue, and so little blameable in his whole conversation. I do confess, gentlemen, this is a thing that hath weight in it. But consider, on the

other hand, my lord Russell is but a man, and hath his human frailties about him. Men fall by several temptations; some out of revenge, some by malice, fall into such offences as these are: My lord Russell is not of that temper, and therefore may-be these are not the ingredients here. But, gentlemen, there is another great and dangerous temptation that attends people in his circumstances, whether it be pride or ambition, or the cruel snare of popularity, being cried up as a patron of liberty. This hath been a dangerous temptation to many, and many persons of virtue have fallen into it, and it is the only way to tempt persons of virtue, and the devil knew it; for he that tempted the pattern of virtue, shewed him all the kingdoms of the world, and said, 'All 'these will I give thee, if thou wilt fall down, 'and worship me.' Though he be a person of virtue, yet it does not follow, but his virtue may have some weak part in him; and I am afraid, these temptations have prevailed upon my lord: for I cannot give myself any colour of objection, to disbelieve all these witnesses who give in their testimony. I see no contradiction, no correspondence, no contrivance at all between them. You have plain oaths before you, and I hope you will consider the weight of them, and the great consequence that did attend this case, the overthrow of the best government in the world, and the best and most unspotted religion, which must needs have suffered; the greatest liberty, and the greatest security for property, that ever was in any nation, bounded every way by the rules of law, and those kept sacred. I hope you will consider the weight of this evidence, and consider the consequences such a conspiracy, if it had taken effect, might have had. And so I leave it to your consideration upon the evidence you have heard.

Serj. *Jefferies.* My lord, and you gentlemen of the jury, this cause hath detained your lordship a long time, by reason of so many witnesses being called, and the length of the defence made by the prisoner at the bar; and if it had not been for the length, I would not have injured your patience by saying any thing, Mr. Solicitor having taken so much pains in it. It is a duty incumbent upon me, under the circumstances I now stand, to see if any thing hath been omitted, that hath not been observed to you; and I shall detain you with very few words.

Gentlemen, you must give me leave to tell you, it is a case of great consequence, of great consequence to that noble person, that now is at the bar, as well as to the king; for it is not desired by the king, nor by his counsel, to have you influenced in this matter by any thing but by the truth, and what evidence you have received. You are not to be moved by compassion or pity; the oath you have taken is to go according to your evidence; and you are not to be moved by any insinuations that are offered by us for the king, nor by any insinuations by the prisoner at the bar; but the truth, according to the testimony given, must be your guide. How far the law will affect this question, that we are not to apply to you; for that we are to apply ourselves to the Court, (they are the judges in point of law) who will take so much care in their direction to you, that you may be very well satisfied you will not easily be led into error. For the instances that have been put, I could put several others; but I will take notice only of one thing, that that noble person at the bar seems to object. Gentlemen, it is not necessary there should be two witnesses to the self-same fact at the self-same time; but if there be two witnesses tending to the self-same fact, though it was at several times, and upon several occasions, they will be in point of law two witnesses, which are necessary to convict a man for high treason. Gentlemen, I make no doubt this thing is known to you all, not only by the judgment of all the judges in England, but the judgment of the lords in parliament, when I doubt not the prisoner at the bar did attend in the case of my lord Stafford, wherein one witness gave an account of a conspiracy in England, Turbervile of another in France; and by the opinion of all my lords the judges approved in parliament, that was enough, and he was convicted.

The question is, Whether we have sufficiently proved this matter? Gentlemen, I must tell you, we rake no gaols, nor bring any profligate persons, persons that wanted faith or credit before this time. I must tell you, that notwithstanding the fair notice that hath been given to the prisoner at the bar, (that you see he hath taken an advantage of it, he hath given an account of a private conversation, which my lord Howard had before that noble person that was witness, since he was taken) he has not given you in any proof hitherto; nay, I say, he has not pretended any thing in the world: wherefore you, gentlemen, that are upon your oaths, should take it upon your consciences, that two men, against whom there is no objection, should come to damn their own souls to take away the life of this gentleman, when there is no quarrel, no temptation, wherefore these gentlemen should come in the face of a court of justice, in the face of such an auditory, without respect to that infinite Being, to whom they appeal for confirmation of the truth of their testimony: and if they had the faith of men or Christians, they must necessarily conclude, that if they did swear to take away a man's life that was innocent, God would sink them down presently into hell.

Gentlemen, in the next place, I must acquaint you, that the first witness, colonel Rumsey, it is apparent, that he was taken notice of by the prisoner as a man fit to be trusted; [illegible] my lord Shaftesbury: but, says he, would any man believe, that that man that had received so many marks of the king's favour, both in advantage to his estate, his honour, and person, could be ever

contriving such an hellish design as this? Gentlemen, if you will argue from such uncertain conjectures, then all criminals will come off. Who should think that my lord of Essex, who had been advanced so much in his estate and honour, should be guilty of such desperate things! which had he not been conscious of, he would scarcely have brought himself to that untimely end, to avoid the methods of public justice. Colonel Rumsey tells you, my lord Shaftesbury was concerned in this conspiracy. I am sorry to find, that there have been so many of the nobility of this land, that have lived so happily under the benign influence of a gracious prince, should make so ill returns. Gentlemen, I must appeal to you, whether in your observation you found colonel Rumsey to be over-hasty, and an over-zealous witness? He did not come as if he came in spite to the prisoner at the bar; you found how we were forced to pump out every thing; but after he had been pressed over and over again, then he came to it: so that I observe to you, that he was an unwilling witness.

Gentlemen, give me leave to observe to you, the prisoner at the bar, before such time as Mr. Shephard came up and gave evidence against him, says he, I came only by accident, only to taste a parcel of wine. Mr. Shephard, when he comes up, he tells you, there was no such design. Ferguson, that was the person he kept company with; the reverend dean, and the rest of the clergy of the Church of England, they were not fit to be trusted with it; but this independent parson, Ferguson, he gives notice of the coming of these persons; and in pursuance of this notice, they all come, they come late in the evening, not in the posture and quality they used to go; for you find they had not so much as a coach. Is it probable they came to taste wine? Wherefore did they go up into a room? Wherefore did they order Mr. Sheppard, that none of the boys should come up, but that the master must fetch the sugar and wine himself? Wherefore you may perceive the action they were upon; there were only to be such persons as had an affection for such a cause. You find, pursuant to what colonel Rumsey says, that there was a direction to take a view of the guards, that sir Thomas Armstrong comes back, and makes this report: says he, I have taken notice, they are in such an idle careless posture, that it is not impossible to surprise them. This Mr. Sheppard he does not come, nor does he appear to you to come here out of any vindictive humour, to do the prisoner at the bar any hurt.

In the next place, we have my lord Howard; he comes and positively tells you, after he had given an account, (for you observe there were two parts to be acted in this horrid tragedy; there was first the scoundrel sort of people were to be concerned to take away the life of the king and the duke, the great persons were to head the party in the rising) they put themselves in proper postures, each of them consenting to something of the surprize, inasmuch as you observe, that sir Thomas Armstrong, and some other persons, might not be trusted. They come and resolve themselves out of a general council, and they meet in a particular council of six, looking upon themselves as the heads of the party: and I must tell you, many of them, (we live not in an age of such obscurity, but we know them) how fond have they been of the applause of the people! As that person encouraged himself yesterday, they were *Liberatores Patriæ*, that could murder the king and the duke.

My lord, I must take notice, that this noble lord is known to have an intimacy with him; you observe with how much tenderness he is pleased to deliver himself, how carefully he reports the debates of the particular consults of the persons to be intrusted in the management; he tells you, that noble lord, the prisoner at the bar, was pitched upon, and Algernon Sidney, a man famous about the town; for what? To call in parties from some of his majesty's other dominions, persons we know ripe enough for rebellion, to assist. Pursuant to this, you find persons sent of a message for some to come over, whereof some are in hold: so that for all dark and obscure sort of matters, nothing can be brought better to light, than this of taking all matters together, with the concurring circumstances of time and place.

Gentlemen, I must confess this noble lord hath given an account by several honourable persons of his conversation, which is a very easy matter. Do you think, if any man had a design to raise a rebellion against the crown, that he would talk of it to the reverend divines, and the noble lords, that are known to be of integrity to the crown? Do you think the gentleman at the bar would have so little concern for his own life, to make this discourse his ordinary conversation? No, it must be a particular consult of six, that must be entrusted with this. I tell you, it is not the divines, of the church of England, but an independent divine, that is to be concerned in this; they must be persons of their own complexion and humour: For men will apply themselves to proper instruments.

Gentlemen, I would not labour in this case; for far be it from any man to endeavour to take away the life of the innocent! and whereas that noble lord says, he hath a virtuous good lady, he hath many children, he hath virtue and honour he puts into the scale; Gentlemen, I must tell you, on the other side, you have consciences, religion; you have a prince, and a merciful one too; consider the life of your prince, the life of his posterity, the consequences that would have attended, if this villainy had taken effect. What would have become of your lives and religion? What would have become of that religion we have been so fond of preserving? Gentlemen, I must put these things home upon your consciences. I know you will remember the horrid murder of the most pious prince the martyr, king

Charles the first. How far the practices of those persons have influenced the several punishments since, is too great a secret for me to examine. But now I say, you have the life of a merciful king, you have a religion, that every honest man ought to stand by, and I am sure every loyal man will venture his life and fortune for. You have your wives and children. Let not the greatness of any man corrupt you; but discharge your consciences both to God and the King, and to your posterity.

L. C. J. Gentlemen of the jury, the prisoner at the bar stands indicted before you of High-treason, in compassing and designing the death of the king, and declaring of it by overt-acts, endeavouring to raise insurrections, and popular commotions, in the kingdom here. To this he hath pleaded, Not Guilty. You have heard the evidence, that hath been against him; it hath been at large repeated by the king's counsel, which will take off a great deal of my trouble in repeating it to you again. I know you cannot but take notice of it, and remember it, it having been stated twice by two of the king's counsel to you; 'tis long, and you see what the parties here have proved. There is first of all colonel Rumsey, he does attest a meeting at Mr. Sheppard's house, and you hear to what purpose he says it was; the message that he brought, and the return he had; it was to enquire concerning a rising at Taunton; and that he had in return to my lord Shaftesbury was, that Mr. Trenchard had failed them, and my lord must be contented; for it could not be that time. You hear, that he does say, that they did design a rising; he saith there was a rising designed in November, I think he saith the seventeenth, upon the day of queen Elizabeth's birth. You hear he does say, there was at that meeting some discourse concerning inspecting the king's guards, and seeing how they kept themselves, and whether they might be surprised; and this, he says, was all in order to a rising. He says, that at this my lord Russell was present. Mr. Sheppard does say, that my lord Russell was there; that he came into this meeting with the duke of Monmouth, and he did go away with the duke of Monmouth he believes. He says, there was some discourse of a rising or insurrection, that was to be procured within the kingdom; but he does not tell you the particulars of any thing, he himself does not. My lord Howard afterwards does come and tell you of a great discourse he had with my lord Shaftesbury, in order to a rising in the city of London; and my lord Shaftesbury did value himself mightily upon 10,000 men he hoped to raise; and a great deal of discourse he had with my lord Shaftesbury. This he does, by way of inducement, to what he says concerning my lord Russell. The evidence against him is some consults, that there were by six of them, who took upon them, as he says, to be a council for the management of the insurrection, that was to be procured in this kingdom. He instances in two, that were for this purpose, the one of them at Mr. Hambden's house, the other at my lord Russell's house. And he tells you at these meetings, there was some discourse of providing treasure, and of providing arms; but they came to no result in these things. He tells you, that there was a design to send for some of the kingdom of Scotland, that might join with them in this thing. And this is, upon the matter, the substance of the evidence, that hath been at large declared to you by the king's counsel, and what you have heard. Now gentlemen, I must tell you, some things it lies upon us to direct you in.

My lord excepts to these witnesses, because they are concerned, by their own shewing, in this design: If there were any, I did direct (some of you might hear me) yesterday, that that was no sufficient exception against a man's being an evidence in the case of treason, that he himself was concerned in it; they are the most proper persons to be evidence, none being able to detect such counsels but them. You have heard my lord Russell's witnesses, that he hath brought concerning them, and concerning his own integrity and course of life, how it has been sober and civil, with a great respect to religion, as these gentlemen do all testify. Now the question before you will be, Whether upon this whole matter you do believe my lord Russell had any design upon the king's life, to destroy the king, or take away his life; for that is the material part here. It is used and given you (by the king's counsel) as an evidence of this, that he did conspire to raise an insurrection, and to cause a rising of the people, to make as it were a rebellion within the nation, and to surprise the king's guards, which, say they, can have no other end, but to seize and destroy the king; and 'tis a great evidence (if my lord Russell did design to seize the king's guards, and make an insurrection in the kingdom) of a design to surprise the king's person. It must be left to you upon the whole matter: you have not evidence in this case as there was in the other matter, that was tried in the morning, or yesterday, against the conspirators to kill the king at the Rye. There was a direct evidence of a consult to kill the king, that is not given you in this case: This is an act of contriving rebellion, and an insurrection within the kingdom, and to seize his guards, which is urged an evidence, and surely is in itself an evidence, to seize and destroy the king.

Upon this whole matter, this is left to you. If you believe the prisoner at the bar to have conspired the death of the king, and in order to that, to have had these consults, that these witnesses speak of, then you must find him Guilty of this treason that is laid to his charge.

Then the Court adjourned till four o'clock, in the afternoon, when the Jury brought the said lord Russell in Guilty of the said High-treason.

See the ACCOUNT of lord RUSSELL's SENTENCE and EXECUTION after Blague's Trial, &c. p. 683.

298. The Trial of JOHN ROUSE,* at the Old Bailey, for High Treason: 35 CHARLES II. A.D. 1683.

JOHN ROUSE, and William Blague, being set to the bar, and having held up their hands, the Indictment was read as follows:

'London. The jurors for our sovereign 'lord the king, upon their oaths, present, That 'John Rouse, late of London, gent. and William Blague, late of London, gent. as false 'traitors, against the most illustrious and excellent prince, our sovereign lord Charles 2, 'by the grace of God, of England, Scotland 'France and Ireland king, their natural lord; 'not having the fear of God in their hearts, 'nor weighing the duty of their allegiance, 'but being moved and seduced by the instigation of the devil; and the true duty, and natural obedience, which true and faithful subjects of our sovereign lord the king, towards 'him our said lord the king, do bear, and 'of right ought to bear, wholly withdrawing; 'and with their whole strength intending the 'peace and common tranquillity of this kingdom of England to disturb, and war and 'rebellion against our said lord the king to move 'and stir up, and the government of our said 'lord the king within this kingdom of England 'to subvert, and our said lord the king from his 'title, honour and kingly name of the imperial crown of this his kingdom of England 'to put down and deprive, and our said lord 'the king to death and final destruction to bring 'and put, the 2d day of March, in the year 'of the reign of our sovereign lord Charles 2, 'king of England, &c. the five-and-thirtieth, 'and divers other days and times, as well before as after, at the parish of St. Michael 'Bassishaw, in the ward of Bassishaw, London, maliciously and traiterously, with divers 'other traitors, to the jurors aforesaid unknown, 'did conspire, compass, imagine and intend 'our said lord the king then supreme lord, not 'only of his kingly state, title, power and government of this his kingdom of England to deprive and throw down; but also our said lord 'the king to kill, and to death to bring and put; 'and the ancient government of this his kingdom of England to change, alter, and wholly 'to subvert, and a miserable slaughter amongst 'the subjects of our said lord the king through 'his whole kingdom of England to cause and 'procure, and insurrection and rebellion 'against our said lord the king to move, and 'stir up within this kingdom of England; and 'to fulfil and perfect the said most horrible 'treasons, and traiterous conspiracies, imaginations and purposes aforesaid, the said John 'Rouse, and William Blague, then and there, 'and divers other days and times, as well before as after, as false traitors, maliciously, 'traiterously and advisedly, they did assemble, 'meet together, and consult between themselves, and with the said other traitors, to the 'jurors aforesaid unknown, and with them did 'treat of the taking and seizing the Tower 'of London, and of and for the executing and 'perfecting their treasons, and traiterous compassings, imaginations and purposes aforesaid: 'and that they the said John Rouse, and William 'Blague, as false traitors, maliciously traiterously and advisedly, then and there, and divers 'other days and times, as well before as after, they 'and either of them did undertake, and to the 'said other traitors did promise for themselves 'to be aiding and assisting in the execution of 'the treasons and traiterous compassings, imaginations and purposes aforesaid; and in 'providing arms and armed men to fulfil and 'perfect the said treasons, and traiterous compassings, imaginations and purposes aforesaid. 'And the said most wicked treasons and traiterous compassings, imaginations and purposes aforesaid, to fulfil and bring to pass, 'they the said John Rouse, and William 'Blague, as false traitors, maliciously, traiterously and advisedly, then and there did procure and prepare arms, to wit, blunderbusses, 'carbines and pistols, against the duty of their 'allegiance, against the peace of our sovereign 'lord the king, his crown and dignity, and 'against the form of the statutes in that case 'made and provided, &c.'

Cl. of Cr. What sayest thou, John Rouse? Art thou guilty of this High Treason, whereof thou standest indicted, or Not Guilty?

Rouse. Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Rouse. By God and my country.

Cl. of Cr. God send thee a good deliverance. What sayest thou, William Blague? Art thou Guilty of this High Treason, whereof thou standest indicted, or Not Guilty?

Capt. *Blague.* Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Blague. By God and my country.

Cl. of Cr. God send thee a good deliverance.

Friday, July 13, in the afternoon, the Court being met, and Proclamation made.

Cl. of Cr. Set John Rouse, and William Blague, to the bar. You the prisoners at the

* See the Note at the beginning of Walcot's case, page 519 of this volume. North says of this Rouse, "He was a thorough paced traitor and looked upon to be paymaster of the mob; a Wappinger and good at mustering seamen, and in order to have good magazines of arms, and ammunition, he was in the front of a design to surprise the Tower and Whitehall. This hung upon the Rye Conspiracy, but was not so directly a part of it as to fall within Keeling's notice, and was discovered before he appeared." Examen, 585.

bar, these good men, that you hear called, are to pass between our sovereign lord the king upon trial of your several lives and deaths; if you will challenge them, or any of them, your time is, as they come to the book to be sworn, before they are sworn. Nicolas Charlton.

Blague. I hope I shall only speak for myself.

L. C. J. (Sir Francis Pemberton.) Yes, you shall be heard.

Rouse. My lord, I have had no liberty so much as sending for my wife. Monday morning they gave me notice of trial; but I have had no advantage of that notice: I presumed it is meant we should have the liberty of subjects: but though notice was then given, yet I had not the liberty of sending for any body till Wednesday: it was eight or nine of the clock on Wednesday night, that one came and told me, I should have no liberty of counsel, unless I had it from the court; and yesterday morning I found, that captain Blague and I were joined in one indictment, which alters the case, with submission to the court. What time I have had for trial has been so short, I have not been able to get my witnesses ready. I desire nothing but as an Englishman.

L. C. J. As an Englishman! You can demand no time to prepare for trial; for those that will commit crimes, they must be ready to answer for them, and defend themselves. It is matter of fact you are charged with; you knew long ago what you were to be tried for; for you were taken up, and charged with high treason. You might then reasonably consider what kind of evidence would be against you: if you be an innocent person, you may defend yourself without question: but if you have done an ill thing, the law does not design to give you time to shelter yourself under any subterfuge or make any excuse; or to prepare any witnesses to testify an untrue thing for you.

Rouse. My lord, I only beg a little time, I do not design to make any evasion. That I am innocent, I thank God I am.

L. C. J. We cannot give you any farther time, unless the king pleases; we are bound to try those he brings before us.

Serj. *Jefferies.* Because captain Blague does not desire to be joined to the other; we that are for the king are contented, that Rouse be tried first.

Then captain Blague was taken away, and after several persons challenged by Rouse, the Jury that were sworn, were, Robert Beddingfield, John Pelling, William Windbury, Theophilus Man, John Short, sen. Thomas Nicholas, Richard Hoare, Thomas Barnes, Henry Robbins, Henry Kempe, Edward Raddish, Edward Kempe.

Cl. of Cr. John Rouse, Hold up thy hand. You of the jury, look upon the prisoner, and hearken to his cause; he stands indicted,—*Prout antea* to his indictment *Mutatis mutandis;* upon this indictment, he hath been arraigned, and thereunto pleaded Not Guilty; and for his trial, put himself upon his country, which country you are; your charge is to inquire, &c.

Mr. *Jones.* May it please your lordship, and you gentlemen of the jury, the prisoner at the the bar stands indicted for high treason, in conspiring the death of the king; and in order thereunto, consulting how to seize the Tower; and in providing of arms, in order to destroy the king, and subvert the government: If we prove it upon him, you are to find him guilty.

Serj. *Jefferies.* The prisoner at the bar was (as you have been acquainted) in that horrid conspiracy, whereof several of the conspirators have been brought to trial, and received a verdict surely according to evidence. The prisoner at the bar did bear a proportion among the rest. It does occur to your memories, there were several undertakers, that undertook several stations; some whereof were to undertake the blackest part of this horrid villainy, by the taking off the king and his royal highness his brother; others (in order to the same design) were to seize upon the king's guards, and so to deprive him of all manner of defence whatsoever; and to prevent all persons to make any defence against them, as you heard, there was another part to be acted; therefore the town was to be divided into several divisions; I think there were twenty; but the most numerous and beneficial parts were thought to be about Wapping. A particular part of the evidence was, That the Tower was to be seized, and the king's arms there; I know you observed, that they took notice of a particular place of the Tower, that was most capable of access. This Rouse is a gentleman very well known, 'tis not the first time he hath been at this bar: He was here at a time when the common justice of the nation could not be obtained in this place, insomuch that the judges who came to execute justice, had more reason to fear being executed upon the bench, than the prisoner at the bar. It may easily appear how far Mr. Rouse was concerned, (I don't love to aggravate matters, he has crimes enough) he was reckoned pay-master to this rabble, he was to take care to manage those persons that were to seize upon the Tower. He is a man of great skill in that subject, a doctrine wherein he was well tutored under a lord you heard mentioned this morning; but he is in his grave, and so I shall say no more of him. We shall give you an account of a design he had how to compass this business. Black-heath was looked upon as a very convenient place, where there was to be a golden ball; for which the seamen were to play in great numbers, and he that won the prize was to have the golden ball; but his eye was upon the Tower all this while. He thought to allure these silly seamen by the advantage of the honourable winning of this ball, and when they were freighted with the success of this meeting, then it was proper to attack the Tower. We shall prove the other prisoner, that was at the bar, engaged with this prisoner

at the bar. We shall not only prove this, but that Mr. Rouse hath been always of an inclination against the government. We shall call you witnesses, that he hath undertaken to dispute by what authority the king comes to govern in England; that he hath said, 'he 'had forfeited his government;' that he told an ordinary miscreant, one of his levellers, 'that he had as much right to the crown as he 'had.' My lord, if we prove this matter to your lordship, and the gentlemen of the jury, it will be high time for us to endeavour to preserve the crown upon that royal head, upon which all loyal men desire it should flourish as long as the sun and moon endure.

Mr. *Burton*, Call Thomas Leigh. [Who was sworn.]

Mr. *Jones*. Pray give us an account what you know concerning Mr. Rouse.

Mr. *North*. Of any design against the king, and providing arms.

Rouse. If you please, my lord, one word before he speaks; I have an exception against him. I wonder with what confidence you can look in my face at this time?

King's Counsel. Nay, nay, speak to the court.

Rouse. My lord, he is a person, that before he was taken up, was swore by two persons to have a hand in the plot; one was Mr. Keeling, the other Mr. How, of Old-street; and then being taken up, and conscious to himself, that he was guilty of such notorious crimes, and knowing I was pretty well acquainted with him, he was deadly afraid I should come and swear against him, and thereupon he took the boldness to swear against me first.

Mr. *North* My lord, he hath offered nothing of objection.

Rouse. I suppose, with submission to the court, without he have his pardon, he is no evidence in this case.

Serj. *Jeff*. Come, tell us all you know.

Mr. *Leigh*. If it please you, my lord, I have been concerned in this conspiracy, I know something of it: but I believe Mr. Rouse knows a great deal more. Mr. Rouse takes me to the King's-head tavern in Swithin's alley, where after some time, Mr. Goodenough came, where there was a club of men that were in the conspiracy. I had seen Mr. Goodenough before; he acquainted me, that there was an apprehension our rights and privileges were invaded, and it was time to look to ourselves; for popery was designed, and arbitrary power; and therefore he desired to know, Whether I would engage in that affair to prevent it? And withal he told me, the city of London and Middlesex was divided in twenty parts; and he asked me to engage in one part. I told him, my acquaintance did not lie where I lived; but I would get a part where my acquaintance was. I acquainted Mr. Rouse and Mr. Goodenough what men I had spoke to. Mr. Goodenough told me, the design was to set up the duke of Monmouth, and kill the king and the duke of York; but that all parties must not know of it: but that we must tell some people, here was like to be a foreign invasion, and ask them, what readiness they were in? And if we found they were like to be compliant in that, then we might discourse with them about the other matter. I discoursed with several men about this affair: and he told me, the lord mayor and aldermen were to be killed immediately, (especially the present lord mayor, sir John Moore) and their houses plundered, and there would be riches enough, and that would help to maintain the army; and we went on further in this discourse. Then I acquainted Mr. Rouse with this business, but he knew of it before; and he did tell me, he could provide arms for an 100 men, and said, nothing was to be done unless the king was seized; saying, we remember since 41 the king went and set up his standard; therefore (says he) we will seize them, that they shall not set up their standard. But (says he) I am for seizing them, but not for shedding their blood. Mr. Rouse went off with that discourse; says he, I must speak with Mr. Goodenough, and some of those that are principally concerned. Mr. Rouse acquainted me, that it was a very convenient thing to have a ball played upon Black-Heath, and to that end we must speak to some sea-captains; and (says he) I will engage ten, and they shall manage that affair and he that wins the ball take it. But when they have so done every captain shall take his party, and tell them, they have other work; and then go with long-boats and arms, and seize the Tower. I acquainted Mr. Goodenough with this, and Mr. Goodenough asked me the charge of the golden ball. Mr. Rouse had told me, it would be ten or a dozen pounds. Mr. Goodenough said, if it was 40*l.* he would be at the charge of it all. Several such discourses Mr. Rouse hath, in my hearing, spoke to several men at the King's Head tavern. I understoood I was sworn against; I heard of it at the King's-Head tavern, in his company and Mr. Goodenough's. Mr. Rouse directed me to go to the Sun tavern near Moorgate, and he would come to me; and there Mr. Rouse and Mr. Goodenough came to me; and Mr. Rouse told me, I should lie at his house. Mr. Rouse cut off my hair, and went to Mr. Bateman's and fetched me a perriwig, Mr. Rouse and I went several times to view the Tower, and took Mate Lee along with us. So Mate Lee directed us to Traitor's Bridge, and he said, that was an easy place, and he would undertake to do it with 100 men, so they had but hand-granadoes. We had, some time before that, appointed to meet at Wapping to speak with the sea captains. Mr. Rouse met the first day in order to this business at the Amsterdam coffee-house, and there Mr. Rouse met with two sea captains (as he told me) that were to officiate in this business, and the two captains he took to the Angel and Crown in Treadneedle-street. A small time after, about an hour and a half, or thereabouts, Mr. Rouse came, (I am not positive whether Mr. Goodenough was

there or no) and told me, he had spoke to both the sea captains, and they were willing; but one was going to New-Jersey, and therefore the work must be done before he went, or he could not assist. Another time he appointed Mate Lee to meet at the Anchor in Wapping. I did speak to Mr. Goodenough, but he did not meet us, so that we could not go down that day: but Mr. Rouse always undertook that business to get ten sea captains, and get arms for 100 men. After I was sworn against, and went to Mr. Rouse's house, the next day Mr. Nelthrop and Mr. Goodenough came to me to Mr. Rouse's; says Mr. Rouse, be not discouraged, let the business go on. I was directed by Mr. Nelthrop and Mr. Goodenough, whenever I was taken into custody, I should deny all, and it could not touch my life. I thank him for his kindness: I lay well, and eat well, at his house, my lord: but however I will tell the truth. We met afterwards several times, and went to captain Blague's and the rest of the company, but at different places. We had an account, that Mr. Goodenough was in the north raising men, and that the duke of Monmouth was thereabouts, and that a deliverance should be wrought for all this.

L. C. J. About what time was this?

Leigh. In last June. The design was so laid, that I was told it was to be done in a fortnight. They never agreed on a way or method of killing the king: but they told me, they had 1,000 horse ready in the country; and that there was 500 horse, or thereabouts, ready in the town; and that the king should be killed coming from Windsor. Now they were contriving how to send arms, that they might not be suspected, to some private place; they were to be sent in trunks to some private house, and there they were to arm themselves in the night; and some brickmen were to go to Windsor to know when the king came, and give information; and so they were to set upon him in some convenient place, and both were to be taken off, together, the king and the duke; and Mr Rouse said, take them off, and then no man can have commission to fight for them.

Serj. *Jeff.* He is a politician every inch of him.

Mr. *Jones.* What did he employ you to do?

Leigh. I was employed by Mr. Goodenough to make all the friends I could in this engagement. I went into Spitalfields, and engaged some weavers and other people. They promised me a gratuity, but I never had any thing.

Serj. *Jeff.* If Mr. Rouse has a mind to ask him any questions.

Rouse. I will, my lord.

L. C. J. Propose your questions to the court.

Rouse. I ask him, by the oath he has taken, whether ever I spake with him of any design against the king and government? I ask you, whether you did not begin with me?

L. C. J. You hear his question; answer it.

Leigh. For that I answer, That Mr. Rouse was the first man that ever I heard propose, that the king and the duke should be secured; and there is another thing come into my mind; Mr. Rouse hath been a traveller, he did presume to say, and has said to me, and in company, that the king was sworn in France and Spain to bring in popery and arbitrary power in so many years, and therefore it was no sin to take him off; and he told me, he had it under his own hand.

Rouse. It was impossible, my lord.

Serj. *Jeff.* I do believe it. I do not believe he thought thee fit to be a secretary.

L. C. J. Look you, if you would have any thing asked him, propose it to me.

Rouse. What place was it I began to speak of any thing of this design?

Leigh. The King's-head.

Rouse. Who was with us?

Leigh. Mr. Goodenough and several others.

Rouse. Was it discoursed of before them?

Leigh. No, you never discoursed of it before them?

Rouse. You discoursed of going an haymaking in the country; says you, I will trust them one alone; but says you, I am under an oath of secrecy, not to communicate it but to one at a time, but I make bold to acquaint you with it: I give you an account what I heard from his own mouth.

L. C. J. Look you, what you heard from him will signify nothing, unless you are able to make proof of it by other witnesses: If you will ask him any questions, you shall. We will hear what you can say for yourself at last: But you must not evade the king's evidence with any discourse at random.

Rouse. Did I ever put you upon any thing of this nature? Did you not tell me there was a design to overturn the government, but you would not shed blood?

Leigh. I will answer: I cannot be positive, whether I came to Mr. Rouse, or he to me. I had been in his company several times before, and whether he discoursed it first to me, or I to him, I cannot tell; but when that point was discoursed, he was very zealous to get ten captains, and that the ball might be played, and the Tower taken.

Rouse. Did ever Mr. Goodenough, and you and I, meet upon such an account?

Leigh. Yes, at the King's-head tavern.

Rouse. I can take my oath, I never saw Mr. Goodenough but twice in your company, and I never knew you till May last.

Serj. *Jeff.* You came to a very strict alliance by that time it came to June.

Mate *Lee* sworn.

Serj. *Jeff.* Tell my lord and the jury what you know, the whole truth and nothing but the truth.

Lee. The whole truth I will tell. About a week before Midsummer, or thereabouts, I met Mr. Rouse, I think it was in Pope's-head alley, going to look after captain Blague: Says Mr. Rouse I have something to say to you,

but he did forbear speaking it then; so I went to the King's-head tavern by the Exchange; we went into a little room. Says he, There is something I would have you do. What is that? says I. Says he, Cannot you get some seamen fitting to make commanders of ships? I did not understand Mr. Rouse's meaning in it; but I thought Mr. Rouse being in employment, might put me in, being destitute of employment, as well as other men. So after we did appoint to meet at Wapping, at the sign of the Blue Anchor in Wapping dock. Says Mr. Rouse, If I come not at ten of the clock, do not look for me. Says he, Can you get no men that are fit to make commanders of ships? Says I, I have no acquaintance with any; I do not know but two or three: But, says I, I will see what I can do. I waited for Mr. Rouse and Mr. Leigh next day (both were to come). The next day I asked him, what he intended by the commanders of the ships? Where would he have those ships? He answered, some of the king's men of war, that lay at Deptford and Woolwich to make guard-ships. Says I, What will you do, if you have no powder and shot? If you could take the Tower, then you might provide them with every thing fitting. Says Mr. Rouse, We must secure the Tower and Whitehall both, or we can do nothing. Says I, Mr. Rouse, where is your oath of allegiance then, that is to the king? Says he, We will secure the king, that he shall come to no damage, and he shall remain king still. If Mr. Rouse hath any thing to object against what I say, I desire to hear it: I speak nothing but the truth.

Serj. *Jeff.* Did you meet with him at any other time?

Lee. This was the first time he put out any such thing to me, concerning any such contrivance.

Serj. *Jeff.* Did you meet with him afterwards?

Lee. Yes, we had some discourse, it was to the same effect; but it signifies nothing; and my memory being shallow, I do not exactly remember it. I know I must give an account of this, before a greater court than this.

Mr. *Burton.* Mr Corbin.

Serj. *Jeff.* I did acquaint you, my lord, that there was occasion to make use of evidence against the prisoner at the bar; I gave you an account how that evidence was not received. Now I desire to give you proof, that the continual inclination of this man's heart was the killing of the king, and destruction of the government.

Mr. *Thomas Corbin* sworn.

Serj. *Jeff.* Pray, Sir, tell my lord, and the gentlemen of the jury, what meetings you had heretofore with the prisoner about the year eighty-one or thereabouts. See whether you know him.

Corbin. What I have to say against Mr. Rouse, is only what I gave in evidence to the court before.

Rouse. When was that?

Corbin. In 1681.

L. C. J. Pray, what do you know of him? Don't tell us what you gave in evidence; but you are on your oath to speak truth, not what you said then.

Corbin. My lord, some few days before the members for the city of London went for Oxford, I happened to appoint a gentleman (one Mr. Wyat) to meet me at Mr. Leech's in Cornhill. Mr. Rouse came by, I knew him very well; he was concerned in the commission for disbanding the army as well as I. He came in, and saluted not only me, but the master of the shop, with, How do you do? He entered into discourse, and said he intended to go for Oxford, and that he had agreed with the coffee-men about town, to furnish them with news: says he, there are several gentlemen resorting to your shop; it would do well, if you had it. Says Mr. Leech, What shall I give you? Says he, if you will go to the tavern we will agree it over a glass of wine. But Mr. Rouse told me he had a kindness to beg of me: and (says he) I would have you engage some of your friends to deliver them speedily to such a person I shall appoint, *de die in diem*; for, says he, if they be delivered by the ordinary letter-carrier, they won't turn to account nor give satisfaction. By-and-by Mr. Wyat came in (that I was to meet at the stationers): Mr. Wyat asked me, What I thought of the sessions? Mr. Rouse made answer, he did foresee it would be a very short sessions. Says he, these frequent prorogations and dissolutions of the parliament won't avail him; for whatever the king has, the parliament gave him, and they may take it away when they please. One bid him have a care what he said; and he replied the king had forfeited his crown, and had no more right to it than he had.

L. C. J. Mr. Rouse, if you would ask him any questions, pray direct yourself to us, and we will ask them.

Rouse. I desire he may be asked, what was said before and after?

L. C. J. Can you tell him? Do you know there was any previous or subsequent discourse to this, that might any way alter it?

Rouse. It was the same question propounded in eighty-one.

Just. *Withins.* Pray, did he say the king had forfeited his crown?

Corbin. Yes, and when he was rebuked for it, he reiterated it.

Serj. *Jeff.* We will trouble your lordship but with one piece of evidence more; only to give you an account. Mr. Rouse is a man very well known in the city of London; yet when there were officers came to seize him, he had forgot his name of Rouse, and did not remember it. Swear William Richardson, (which was done). Pray, tell my lord and the jury, whether you were at the taking of this Mr. Rouse, and what name he went by?

Richardson. I was upon the fourth of July

instant to search for one Armiger, and coming to widow Hay's coffee-house, (I think they call it) the widow told me, there was no man in the house; I went down the street, and came back again, and one said, he saw a man go into the garden: says he, do you stay here, and I will go and see: he saw this gentleman: says he, what is your name? He said, Johnson: I asked him, and he said, Johnson. I told him, we must have an account of him. Some said, they did not know him. We went to the Half-Moon tavern, in Aldersgate-street; he sent for other men; they said, they did know him; but they could say nothing in his behalf.

Serj. *Jeff.* Is that the man, Johnson?

Richardson. That is the man, that said his name was Johnson.

L. C. J. Look you now, Mr. Rouse, this is your time to speak for yourself: what have you to say to this that is charged upon you? You hear the first witness does say, That you would have engaged him in a design of raising of men; and you told him, you designed to surprise the Tower; and to that purpose he surveyed it with you; and you told him what your design was you met Mr. Goodenough about; it was to raise men. Goodenough was for killing the king; you, it seems, at first, was but for securing the king, and making him do what you please; but afterwards, it was come to an higher matter; and then you had found out a way to engage some captains to seize the Tower, and others were to seize Whitehall; both were to be done at once. What say you to this, (here are three witnesses that testify very strongly against you) and the device you had to get men to Blackheath to secure the Tower?

Rouse. My lord, I stand here for my life; it never entered into my heart, nor came out of my mouth; but he came to me several times about it, and I opposed it. At last he dogged me so often, that he gave me occasion to ask him the meaning of it. The first place I saw him in, was the King's-Head (as he saith truly) in Swithin's-alley. There were several persons, (as they met there every day upon their private occasions) that is true. He asked me a strange question, (that was the first time that I heard of it) Whether I was willing to oppose a foreign invasion, that was like to be made speedily? And, Whether I would engage in the defence of it? And this he did two or three times afterwards. To which I replied, Sir, I and every honest man are bound (as we are subjects, and have taken the oaths of supremacy and allegiance) to engage in such a thing you put me upon, that was, to engage against a foreign invasion. 'The next time, he asked me, How far I would assist, if such a thing should fall out as a foreign invasion. I wondered to hear it so often repeated; I answered, I never had but one sword for several years, though I have had occasion for many in other countries; but I make no question but by the assistance of my friends, to raise an hundred arms, that was my very expression: But withal I demanded, What he meant by invasion? And that I insisted upon several times: For, says I, I know of none, and I hope there is none like to be. I took an account of this in characters, and have acquainted his majesty and the council with it. He replied to me: Says he, I wonder you are a stranger to such a thing. 'Tis true, says he, that is the word goes up and down: But, says he, there is another kind of invasion meant by some men. I asked him, What other invasion do you mean? He answered presently, Don't you know? Are you a stranger in England? In Israel? Says he, there is an invasion upon our rights and liberties, and all we have: Whereupon I was a little startled. This was at the King's-Head tavern. Another time I desired him to explain his meaning, being a stranger to it, when I expressed my readiness to serve the king upon such an occasion, in those words. They that know me, know that I am not in the capacity of raising an hundred arms; but I intended it, as God knows, in opposition to a foreign invasion: But, I thank God, I took characters day by day, and with a resolution day by day to discover it: But he has got the start of me, for fear I should swear against him. He insisted still upon it, That our rights and liberties were invaded; and that was the invasion all along intended; and that was the way to hook in persons, only upon that pretence of a foreign invasion. I asked him, In what manner he meant invasion? Says he, What with their doctrines on one hand, and oppression on the other, they lie so heavy, that we can't bear it no longer. Says I, What do you mean by this? What course do you think of? What can you propound to yourself to extricate yourself out of these troubles you so much complain of? To which he answered, You are a stranger to what is a-foot, and hath been a-foot, a great while. Do you not know the persons that are engaged in the design? (I was a little inqusitive to know what was meant by the persons) No, (says I) positively, I know not what you mean; I am a perfect stranger to these persons, and this design; and I wished him, and all others, (as they were men and christians) that they would take care of opposing the government they lived under, that was my very words. Says he, that we have considered very well, and how to secure the 'two things;' and, says he, you shall see we will do it dextrously, without shedding a drop of blood: Nay, says he, not the blood of the duke of York, though he be the veriest dog in England. I desired him to explain himself. He answered, The mischief of it is, we can't agree among ourselves; for it was us and we at every word; so I concluded he was of the cabal and club, that met together on this design (that hath come before your lordship); and I am pretty confident there was such a hellish design, though I thank God, I had no hand in it. Said I, who are the persons? Pray declare the bottom of this story you come to me about, one day after

another. With much ado, he told me, Mr. Goodenough was one. After this discourse, never saw Mr. Goodenough but twice; once was at the King's-Head tavern, where I believe was twenty, the second time, was a day or two after I saw the proclamation, and his name in it. So much I speak of Mr. Goodenough I asked him the names of the other persons, that were engaged in this design; and says he, I must conceal them, for I am under an obligation: But the first time I saw the proclamation against colonel Rumsey and the others, says he, I was deadly afraid I was in the proclamation; but (says he) all these persons are concerned, and several others. Thereupon he told me, that when they met they came to this resolution of seizing the Tower, the aldermen, and taking of London. Says I, Pray what money have you to carry on this? Money? Oh, says he, we don't want money; says he. Mr. Goodenough hath assured me there is 40,000*l*.

L. C. J. Look you, you invert all his discourse: He hath sworn it against you. Have you any evidence in the world? You are not in a capacity to swear against him.

Rouse. My lord, he hath turned it upon me, he spake to me always in private.

L. C. J. Look you, you have fixed but upon one person, here was Mate Lee, that gives a very shrewd evidence against you; Did he come and teach you? Did he use these words?

Rouse. My lord, I have nothing to say against Mate Lee, I hope he is an honest man. But I having a design to discover this whole thing, and having so much out of Leigh the dyer—

L. C. J. What did you use these words to him for then?

Rouse. To satisfy the gentlemen that put me upon it, that I might come to the bottom of the design.

Just. *Withins.* You say you know a great deal more: How came it to pass you never told the king one word of this till after you was taken?

Rouse. I have told it since I was taken.

Solicitor General. (Mr. Finch) Pray, when you had got to the bottom of all this (as you call it) why did you deny your name?

Rouse. I did not deny my name.

Serj. *Jeff.* He hath as many names as he has designs, and they are abundance.

Rouse I did not know they were officers. I did not think there was any obligation upon me to tell every man my name.

L. C. J. You hear what evidence is given against you concerning your discourse in 1681; which though it be not the thing for which you are directly called in question, yet if you could clear yourself of it, it would import you much, for that does shew your spirit, and that you have had a long while a design against the king's life, if that be true; therefore it would be very fitting that you purged yourself of it, and that you could some way or other give an answer to what you said, 'That the King had forfeited his crown, and 'had no more right to it, than one of those 'sorry persons you spoke to:' and to say the parliament might 'take away the king's au- 'thority.' These are strange treasonable expressions.

Rouse. My lord, though this thing be revived, which was out of doors two years since, and I suppose it is well known to your lordship, who was then upon the bench. As I was told, there was a word in the indictment called Colloquium: he was asked what discourse passed before: but if Mr. Corbin would remember himself, I do confess I did say these words; but the words that followed before

Just. *Withens.* What do you mean, the cart before the horse?

Rouse. Mr. Wyat was urging of several discourses, the popish grandeur in deposing kings; and I gave this answer in these words: 'Sir,' (says I) 'If it were in the power of any 'pope to depose the king, then he might as 'well take away the crown off the king's 'head; but he hath no such power; if he had 'that power, says I, then the Crown of England is your's as much as his.'

Sol. Gen. What was the Colloquium, when you said the parliament might take it away?

Rouse. I never said that.

L. C. J. I have heard a great deal of your discourse: if you think you can make any of it good by witnesses to your advantage, call them.

Rouse. My lord, I have not had time to collect my witnesses. How can it be supposed I should call witnesses? I don't know whether they are here. Here are witnesses called to prove a matter, whereof upon a trial two years past I was acquitted.

Just. *Withens.* Pray do not go away with that, here are two witnesses since.

L. C. J You were told, that was not the thing laid to your charge now, that does only shew the temper of your spirit, and how your inclinations have been all along. Look you, this you are now charged with, is a design to seize and kill the king, and to that purpose to have entered into a conspiracy with Goodenough and others, for the raising of men, and the making of a rebellion and insurrection here in the kingdom; whereby you might have seized not only the king, but his fort here, the Tower, and made yourselves masters of his ships, and so entered into a perfect war with him in his own kingdom, to the destruction of himself and the government. You hear what the witnesses say against you.

Rouse. I do declare, in the presence of God Almighty, before whom I must stand, it never entered into my heart.

Mr. *Jones.* If that would do, we should have none hanged.

Rouse. I appeal to your lordship, and this honourable court, whether it is likely for me, who am such a silly person, to engage in such a devilish design, especially being concerned

with no person in the world about it; for I declare, if I was upon ten thousand oaths, I never had any discourse with any person in the world about it. In the next place, I never was in any meeting, though I have heard of several darkly that they met in London, and in several clubs, but I could never find out the places. I desire to ask him, whether he knows with whom I did concern myself.

L. C. J. Look you, did you never meet him with any company concerning any of these treasonable designs that you have spoken of?

Leigh. I will give your lordship and the jury an account. Mr. Rouse acquainted me he could make ten sea-captains; I acquainted Mr. Goodenough with it. He told me he would have a golden ball, and told me the charge. We went to the Angel and Crown tavern, from thence he came to meet Mr. Goodenough, to tell him what he had said to these captains. The next day he met Mr. Goodenough; and Mr. Goodenough, Mr. Rouse, Mr. Pachin, and I, went from Joseph's coffee-house in Exchange-Alley, and he discoursed about getting of these captains.

Rouse. Who was present?

Leigh. We never discoursed the matter jointly, but singly with one man. Mr. Rouse and Mr. Goodenough went into a room apart above stairs, and discoursed this matter (as I believe) half an hour.

Rouse. How do you know what discourse I had with Mr. Goodenough when you was not present?

Leigh. Mr. Goodenough thanked me for bringing him acquainted with you.

L. C. J. How do you know what discourse they had?

Leigh. I know only what Mr. Rouse told me; Mr. Rouse told me, that he would engage ten sea-captains, that a ball should be played, and every man take his dividend.

L. C. J. Did he tell you he had discoursed this with Mr. Goodenough?

Rouse. Did I tell you so?—*Leigh.* Yes, Sir.

L. C. J. You speak of several in company, one Pachin and others.

Leigh. We went from the King's-head tavern, for there was company we did not like, though we discoursed there but of hay-making, and getting men to help the country people.

L. C. J. What did you mean by that?

Leigh. That was to get men for this business.

L. C. J. What did he say the intention was of raising these men?

Leigh. Mr. Rouse hath frequently and often acquainted me, that the king had taken an oath in France and Spain to bring in popery and arbitrary power in so many years, and that he had not done it, made the Popish party angry, but that he would do it.

L. C. J. Well, what design was there in raising of men, and seizing the Tower?

Leigh. He told me all things must be done together. The king and the duke must be seized, for that was the principal work.

Rouse. It never entered into my heart. Be pleased to ask him if he was not arrested by one Keeling, and what was the account of it?

Leigh. No.

Rouse. I mean sworn against.

Leigh. I will give your lordship an account of it. Mr. Goodenough, Mr. Rouse, Mr. Pachin, and I, had been at the King's-head tavern; a man came and told me, a man had been at my house, and that one swore against me, and it would be dangerous to go home. A while after comes one Armiger, and he told me, Mr. Bateman was gone one way, and he another, to seek for me, and desired me to have a care of myself. With that Mr. Rouse, Mr. Goodenough, and Mr. Pachin, came out to me. Mr. Rouse directed me to go to the Sun tavern at Moorgate, and I went; Mr. Rouse, Mr. Goodenough, and Mr. Pachin came to me. I told them I would meet my wife, but they would not let me go on by any means, but sent one Mr. Thomas, a coffee-man, for my wife. She came and told me, Mr. Goodenough had sworn against several people, or he was sworn against. I went to Mr. Rouse's house, where Mr. Goodenough came to me. Mr. Rouse would have had Mr. Goodenough staid there all night: Mr. Goodenough sent for his wife, to know if his brother had sworn; she acquainted him, he had not sworn: Mr. Rouse invited him to lie with me. He shewed me, behind the bed, a window to go into another man's room, to make my escape, if any man should come to search the house. I lay there on Saturday. Mr. Goodenough and Mr. Nelthrop came to me; Mr. Goodenough told me, he had lain at Mr. Nelthrop's all night, but he had seen his brother, and he had not sworn against me: I heard that Mr. Keeling had sworn against me, and did say, in discourse, if I did light of Keeling, I would kill him.

Rouse. I desire to ask him another question: when he was told he was sworn against, what did he say?

L. C. J. He tells you before-hand, that he said he would kill Keeling, if he could meet him.

Rouse. He says Mr. Goodenough and Nelthrop came to my house; ask him if I was in the house, or saw Mr. Goodenough?

Leigh. I am not positive whether he saw them together, but that he saw Mr. Goodenough there the Friday night, for he invited him to lie with me.

L. C. J. Pray, what was your reason in putting mate Lee upon the inquiring out men to make masters of ships?

Rouse. To satisfy the gentleman, because he told me, there was such a design in hand, to get to the bottom of that design, that so his majesty might come to no damage. Pray, my lord, how could I acquaint the king, or any justice of peace, what he meant by it, unless I understood it?

L. C. J. Have you any thing more to ask? Or would you have any witnesses called?

Rouse. My lord, it is my unhappiness I have no witnesses.

Serj. *Jeff.* He hath confessed the treason enough.

L. C. J. Look you, gentlemen of the Jury. You hear that this person at the bar is indicted for high treason, in conspiring the king's death, and declaring this by overt-acts, that is, endeavouring to raise men here for to seize the Tower, and to make an insurrection here, and a rebellion within the kingdom: you hear two positive witnesses of what they have heard from him: he did endeavour, says Lee, to bring him into it, and he told him the whole design, he did declare to him the manner how they intended to seize the king, and the duke of York: Mr. Goodenough was one of the persons that confederated with him, one of them, but several others they had. They had covert terms to disguise this, by getting the country people in their harvest. He told them of a design he had to get the seamen, a thousand of them together, to seize the Tower and Whitehall, both at a time. And you hear that mate Lee had the same discourse in substance with him, of endeavouring to seize the Tower, and get arms for to seize the king's ships, to raise a thousand persons for the effecting of this. All these things you have heard proved against him; he gives no answer to any of them, but only tells you, that in truth he did not say these things to them; but they, that is the first, Lee, said these things to him. He hath no evidence at all of it. You hear likewise (which does agree with this case) the testimony by the other person concerning his discourse in eighty-one: how he said, The king had forfeited his crown, and had no right to it; but the parliament gave him his authority, and might take it away. All these discourses they savour of a wicked spirit as can be in the whole world. I must leave it to you, whether you believe him guilty.

The Jury presently gave their verdict that he was Guilty.

See an Account of his Sentence and Execution after Blague's Case.

299. The Trial of WILLIAM BLAGUE,* at the Old Bailey, for High Treason: 35 CHARLES II. A.D. 1683.

WILLIAM BLAGUE having been arraigned on Thursday, July 12th, pleaded Not Guilty, and put himself upon his country, was brought to the bar again, Friday July 13. He made no challenges, and the former jury was sworn: viz. Robert Beddingfield, John Pelling, Wm. Windbury, Theophilus Man, John Short, sen. Thomas Nicholas, Richard Hoare, Thomas Barnes, Henry Robbins, Henry Kempe, Edw. Raddish, and Edward Kempe.

Clerk. Gentlemen of the Jury, look upon the prisoner, and hearken to his charge. He stands indicted by the name of William Blague, late of London, gent. that he, together with John Rouse, &c.

Mr. *North.* Gentlemen, you that are sworn; the prisoner at the bar is charged with compassing the death of the king, and conspiring to raise war and rebellion, to destroy the government, and take possession of it; that he did conspire with one Rouse, and several others not yet known, to bring these things to pass, and being joined together, to seize the Tower, and to provide several arms. To this he hath pleaded Not Guilty, &c.

Serj. *Jefferies.* My lord, and you gentlemen of the jury, we shall not need to trouble you much with the prisoner at the bar, for this prisoner, with him that went before, were to undertake that part of this horrid conspiracy relating to the seizing the Tower, because the same witnesses that were against the former, are against the prisoner at the bar. We shall not need to trouble you with the history, we will cause our witnesses to prove it. Do you hear, Leigh? you must tell my lord and the jury what the prisoner at the bar was concerned in.

L. C. J. What do you know of any treasonable practices of his?

Leigh. I will acquaint your lordship, and the gentlemen of the jury, that capt. Blague and Mr. Rouse were frequently at the tavern. I presume many times they came in about business, and sometimes there were discourses to carry on this conspiracy. Mr. Rouse told me, he had acquainted capt. Blague with it, about getting ten sea captains; captain Blague told him, they had better engage one or two ships to shoot mortar-pieces into the Tower, which would presently destroy it; and discoursing with capt. Blague about the affair, he told me he would be ready in a fortnight or three weeks.

Capt. *Blague.* My lord, will you please to ask what time that was?

L. C. J. You shall have any question asked by-and-by.

Blague. Very well.

Leigh. Capt. Blague told me, he would be ready in a fortnight or something more, and he had an intention to lay in about fourteen guns in his own ship that he had bought, he would have twenty-four in it, and lay it on Southwark side against the Tower. He would venture his ship, but they must see they were provided with money for the seamen. I acquainted Mr. Goodenough with this, and Mr. Goodenough desired to speak with capt. Blague; I told capt. Blague of it, and we took coach at Stocks-market, and went to the King's-head in Chancery-Lane, where we met with

* See the Note at the beginning of Walcot's Case, p. 519, of this volume.

Mr. Richard Goodenough, and Mr. Francis Goodenough. Capt. Blague asked, what money they had provided; they said, about 40,000*l.* says capt. Blague, the seamen will swallow that up immediately.

L. C. J. What did capt. Blague say?

Leigh. Mr. Goodenough and capt. Blague discoursed about the matter at the King's-head tavern at Chancery-Lane end, and the discourse about the matter was, how to seize the Tower; he then told them again, the only way was to do it with mortar pieces, that he would venture his own ship, and provide two hundred men.

L. C. J. What did he say about money?

Leigh. He asked what money was provided, he said, there was about 40,000*l.* then he said, that would be easily swallowed. Mr. Goodenough said, that there would be more provided at any time. Captain Blague and Mr. Goodenough, both of them drank a glass or two of wine together, and so at that time we parted. I met with captain Blague again, and he bid me, for God's sake, don't discourse before my mate such a-one, but my mate Lee is a very honest fellow: said he, I will undertake, once in twenty times, to dismount them six guns that face towards Surry side, which I understood to be about Traitor's-Bridge, he would undertake to dismount them. What discourse captain Blague and Mr. Goodenough had apart I can't tell, but Mr. Goodenough told me, he would get some other captains to engage in that affair. That business was left to him and I, and I was desired to be frequently with captain Blague, for the managing this affair of the Tower; and, says he, I have a commission, though not in England, by land as well as by sea.

L. C. J. Will you ask him any thing, Sir? Now he shall be asked any thing that you will propose. First, you do propose to him, about what time this meeting was. What say you to that?

Leigh. If it please your lordship, I believe it was towards the latter end of May, or the beginning of June.

Blague. If you please, my lord, I will give you a journal or narrative of all my proceedings.

L. C. J. Will you ask him any more than that?

Blague. No, my lord.

Serj. *Jeff.* We will call mate Lee. This mate Lee was the man that might not be trusted.——Mate Lee, tell my lord, and the gentlemen of the jury, what discourse you have had with the prisoner at the bar, captain Blague, about seizing the Tower.

Mate *Lee.* I shall, Sir. The first discourse that ever I understood, was one time he and I was riding in a coach, says capt. Blague one of these days we shall have a ball to toss. I did not know the meaning of this ball, till afterwards Mr. Rouse, and Mr. Leigh and I came together, and he told me of tossing a ball upon Black-heath. Then I began to understand it. And after this, I can't tell whether it was before that captain Blague and I walked before the Tower, and discoursing of this, my way was to scale the Tower, and take it that way; says captain Blague, the best way is to shoot mortar-pieces on Southwark side; this was all the discourse.

Serj. *Jeff.* Can you say any thing about the ship?

Lee. Nothing about the ship, but about mortar-pieces on Southwark side.

Serj. *Jeff.* What time was that?

Lee. I cannot be positive, about six weeks ago, or less.

Serj. *Jeff.* The first time was in the coach?

Lee. That was about the ball, I did not understand it, only tossing up a ball; I did not understand the meaning of it, till afterwards Mr. Rouse and Mr. Leigh and I came together.

L. C. J. How came you to discourse with him concerning the best way of taking the Tower?

Lee. Mr. Rouse and Mr. Leigh and I, and captain Blague had been together. We discoursed about taking the Tower. And we had this discourse among ourselves, which was the best way to take the Tower? My approbation was scaling-ladders, and hand-granadoes, that was the best way; captain Blague's way was with mortar-pieces on Southwark side.

L. C. J. To what intent was this discourse, had you any former discourse with any persons?

Lee. Not at all, if it please your lordship. The first discourse I had was with Mr. Rouse and Mr. Leigh.

L. C. J. And was that about taking the Tower?

Lee. To surprise the Tower, and Mr. Leigh and Mr. Rouse and I went down to view the Tower.

L. C. J. Then afterwards captain Blague came in about the way to take it?

Lee. This discourse with capt. Blague, about the Tower, was between him and I. I don't remember it in any other company.

L. C. J. What was your business with captain Blague?

Lee. My business was with capt. Blague, to be his mate, and I was conversant with him at the Exchange, the Coffee-house, and the King's-head tavern. And we had discourse about these things.

L. C. J. Come, captain Blague, would you have him asked any question?

Blague. My lord, otherwise I had gone to sea soon after I came home; but so it was, that I had an occasion for Pennsylvania and New York, and coming one day to the Exchange, I met Mr. Rouse, whom I had not seen in 16 or 17 years before, for Mr. Rouse had made a voyage to Virginia with me about 20 years ago. Now, my lord, meeting with Mr. Rouse, I had an occasion then to take up two or three hundred pounds, and knowing Mr. Rouse was

a broker, I did employ him to procure it me, but he did not; however, daily I came to him to dispatch that affair; and Mr. Rouse being a man for a tavern, I went to the King's-head tavern and the Sun tavern, if he was not at one place I found him at another, in order to perfect this business. So, my lord, when I came into his company, several people used to be with him that I never saw in my life, and Mr. Rouse would say, sit down a little, and I will go with you presently; so I would sit down, and drink a glass of wine, and go to the places where the affair was to be managed; after I had done thus several days, and to no purpose, I did it myself. Now, my lord, Mr. Rouse in that time brought me acquainted with Goodenough, because Goodenough was in his company, and Mr. Leigh, not that I ever saw Mr. Goodenough in my life before, and not as Mr. Leigh says, that I ever was with him at the Dragon.

Leigh. The King's Head tavern in Chancery-Lane.

Blague. I was just coming home when Mr. Leigh was going to meet with Mr. Goodenough, and I went in there, and took a glass of wine, and bid him farewell, and so went home. When I was with Mr. Rouse, I asking, what people they were that were in his company, he said very honest men, drank a glass of wine and went away, and still I found them together. I was saying to this Mr. Leigh here if you will go along with me, you shall give me as much for your passage as any of the rest of the passengers do. Now, at this time, my ship was not in my possession; this very day three weeks I had it in my possession, and now at this very day she is in the carpenter's hands, who is here now, I suppose.

L. C. J. Well, go on.

Blague. Now, Sir, whereas Mr. Leigh reports, that I discoursed with Mr. Goodenough concerning any public affairs, or any thing tending to the disturbance of the peace, then I am not a christian. Besides, Sir, I did not speak twenty words, or ten words at the time, but, your servant Sir, or, here is to you, in a glass of wine; and this I do speak in the presence of God Almighty. And when I came into a room, I never staid longer than Mr. Rouse, for my business was with him, and so went about my own affairs, As for Mr. Goodenough, I believe, I was three times in his company before I could remember his name; and I would ask Rouse several times, What do you call that man? But in reference to the Tower, that Mr. Leigh speaks of, that must be touched at. I do remember very well, I shall by no means palliate it, if I were presently to die; coming up from the ship, we were coming by water, indeed I should have had possession of the ship a fortnight before, if they had done me justice; I had 2 or 300*l.* for them before; but coming from the ship, we were coming up by water by the Tower, I do not know how it was, I spake it to the waterman, This place is not well fortified, and if any occasion should happen, this place lies in more peril and jeopardy than any place of the Tower, and so it does. It is an easy matter for any to give their sentiments whether they be accepted of or no. This is the very thing I said, and then they were talking of a French war, and the like. Then I said, You silly fools, if they should take it, it is but going over a t'other side, and throwing half a dozen bombo's to them, and set them out again. But, however, mate Lee, if he remember, I told him the same thing at that same time; and I told Mr. Leigh, it was a pity, a thousand times, that place was not better fortified. But as to what Mr. Leigh says, to have 200 men in a poor pink, I have refused several in that very ship, because I could not stow 100 men, women and children, and that I should press 200 men in that ship, that will not hold. And besides, it is a pink, let any one look upon her, and see whether that ship be fit or no to take in 200 men. But whereas they say I had arms, and such things, I bought the ship and arms together, I had four blunderbusses, two javelins, and half-pikes, that is all.

L. C. J. You forget to answer several things; you had discourse about a bank of money.

Blague. A bank of money, my lord, I never discoursed of. And as to the ball that my mate speaks of, my lord, I know no more what it means to this very day, than one that never saw a ball.

L. C. J. Look you, Sir, you were with Mr. Leigh, this Mr. Leigh has sworn; he says, you told him. that you would undertake to get 200 men, and you had bought 14 pieces of ordnance already, and that you would within a fortnight's time, do you remember, bring your ship to Southwark, and be ready to beat down that part of the Tower.

Blague. My lord, I have told you already, the ship was not mine to bring till this day three weeks.

L. C. J. That was within compass, for they tell you this discourse was about a month ago.

Blague. It was in May, my lord, they talk of.

L. C. J. No, they speak of about a month ago, you were to have them in a fortnight's time.——What says the first Leigh, what time does he speak of?

Leigh. If it please your lordship, he said, his ship would be ready in a fortnight's time, or thereabouts.

L. C. J. How long was that ago?

Leigh. About a month or five weeks.

L. C. J To what purpose did you meet Mr. Goodenough so often, to discourse about this matter of the Tower?

Blague. My lord, I never met with him at all, but when I came to Mr. Rouse about this business of the 200*l.*

L. C. J. Mr. Leigh, what say you concerning his inquiry for money?

Leigh. If it please your lordship, Mr.

Goodenough and the captain met at the King's-Head tavern, they met several times apart, out of company, and discoursed of the business apart. Mr. Goodenough asked me for the captain many times; I told him what the captain said to me. Mr. Goodenough took the captain out, and discoursed him about this affair. Mr. Goodenough hath told me several times, the captain would be very serviceable. The captain asked, what money there was; I told him about 40,000*l.* and he said, that would be quickly gone. I enquired of Mr. Goodenough again, and Mr. Goodenough told me, there was more money in Holland.

L. C. J. What money was he to have?

Leigh. Two hundred men.—The captain says, I named him before the king and council to be at a meeting at the Green-Dragon tavern. It is true, I did acquaint the king and council, that Mr. Rouse had business at the Green-Dragon tavern. But this was at the time of my absconding, I could not tell where to meet him again.

L. C. J. What guns did he say he had provided?

Leigh. If it please your lordship, he said, he had 14 guns in the ship, and would make them up 24: He would undertake in twenty shot to dismount them guns.

L. C. J. Where was this discourse you had with him about this 200*l.*

Leigh. If it please your lordship, it was at several times, one was with Mr. Goodenough at the King's-head at the corner of Chancery-lane.

L. C. J. Look you, Sir, by the oath you have taken, did he undertake to raise men, and assist with his ship in taking the Tower?

Leigh. If it please your lordship, he told me he would so do it. He told me, he would have 24 guns.

Jury. Did the captain tell you so?

Leigh. Captain Blague that is here.

Blague. My lord, in reference to the 200 men, this is the thing that I would answer, I could not stow 100 men, women and children.

L. C. J. Two hundred men, he says, for this service.

Blague. Yes, my lord, I mean so. Who can you have to say so besides yourself?

Leigh. If it please your lordship, this discourse was only with Mr. Rouse, Mr. Goodenough, capt. Blague and I.

Blague. My lord, Mr. Leigh said before the king and council, that he was never along with me but once, and of what I said then, he could tell only he was there when I went to look for Mr. Rouse. How can these expressions go together?

Leigh. My lord, as to that before the king and council, I did say, I was not apart with captain Blague and Mr. Goodenough, at the King's-head tavern, but captain Blague and Mr. Goodenough were there several times, and they were apart by themselves; and that I had discourse with captain Blague and Mr. Goodenough, and came with them once to the King's-head tavern.

L. C. J What did captain Blague tell you of what discourse he had with Mr. Goodenough?

Leigh. Capt. Blague did tell me, that we must have a great care, or else we should be all ruined, and that his ship should be ready, and always encouraged me. And, says he, when I have done the business, I have been a captain ashore in another country, I have been in commission in another country ashore, and can tell how to manage men ashore as well as aboard. Another thing was, after all this, some-time, when I understood I was sworn against, I was indeed, the captain says right, to have gone with him a passenger, and was with him several times, I gave him a report how the Tower might be taken by ladders and granadoes, and he told me, that Nelthrop's brother came to see him, and did inform me, that neither Mr. Goodenough nor his brother was taken, and that the duke of Monmouth was in the country, and quickly would come.

L. C. J. Who told you this?

Leigh. Captain Blague.

Serj. *Jeff.* This is a pretty matter to smirk at, captain.

Blague. I will assure you, Sir, there is no truth in it.

Serj. *Jeff.* Would you smile the witnesses out of their oaths?

L. C. J. Look you, Mate Lee, What say you to this? In your judgment and your thoughts, was the discourse concerning taking the Tower in a jesting way?

Lee. No, and it shall please your lordship, I was in earnest in discoursing of it; my way was, as I told your lordship before, scaling-ladders and hand-granadoes.

L. C. J. Had you any talk before of surprizing the Tower?

Lee No, my lord, by nobody but Mr. Rouse and Leigh.

L. C. J. What had they spoken to you concerning surprizing the Tower?

Lee Mr. Rouse spoke to me of getting some seamen, that might be fit to make masters of ships; and I asked him, what he would do, with those seamen to make commanders of ships? He said, to put them aboard the king's men of war, and make guard ships of them: I said, what can you do with them to make guard-ships, when there is neither powder, shot nor ammunition? But, said I, if you can take the Tower, you may do well enough: So that our discourse was about taking the Tower.

L. C. J. Was capt. Blague with you then?

Lee. What discourse we had about taking the Tower was between ourselves.

L. C. J. How came you to discourse concerning this?

Lee. This was our common discourse. I suppose the instigation might be by Mr. Rouse, I was acquainted with Mr. Rouse, by going with captain Blague; this was my first discourse with Mr. Rouse and Mr. Leigh together.

L. C. J. Who was with you when you discoursed it first?

Lee. There was only Mr. Rouse and Mr. Leigh; I can be positive that captain Blague was not: But this captain Blague did say, when I gave my way of taking the Tower by scaling-ladders, and hand-granadoes; No, says captain Blague, it is a better way to have mortar pieces over the water, and shoot into the Tower.

Serj. *Jeff.* Hark you, friend, did Leigh or Rouse tell you, that Blague was made privy to it?

Lee. I understood nothing of it, but what we discoursed together; for I was acquainted with none of the cabal, but Mr. Rouse and Mr. Leigh.

L. C. J. What did you discourse about?

Lee. About taking the Tower. I won't mince it, I am upon my oath.

L. C. J. Therefore we would have the truth out of you.

Lee. I did gather from Mr. Rouse and Mr. Leigh, that the intention was to take the Tower?

L. C. J. Give some account how you and Blague came to discourse of such a thing as this is, and in order to what design.

Lee. The design was to take the Tower.

L. C. J. Did Blague and you discourse it to this purpose?

Lee. Captain Blague and I discoursed it to that purpose of taking the Tower.

Sol. Gen. Did you discourse of it as a thing that might be done, or that was intended to be done?

Lee. We did discourse of it as a thing that might be done, or was intended to be done.

L. C. J. Now captain Blague, if you have any thing to ask him you may.

Blague. Ask him, whether there were any projections or provisions made for the taking of it; and whether or no there was any resolution taken that the Tower should be taken.

Lee. An't shall please your lordship, the king's majesty asked me, when I said what captain Blague said, about taking the Tower with mortar-pieces; if it please your majesty, said I, I do not know whether there was any such thing discoursed, that I did not hear.

L. C. J. Well, was there any thing provided or designed in order to it?

Lee. An't please your lordship, there was nothing of men or guns provided, that I did know or hear of.

Serj. *Jeff.* How many times did you talk with captain Blague about this?

Lee. Several times.

L. C. J. Had you any order from any other persons for to discourse captain Blague in order to this?

Lee. No, an't shall please your lordship, to the best my knowledge I had no order; for they were commonly together, captain Blague, Mr. Rouse, and Mr. Leigh, and I came to them when I had business with captain Blague.

L. C. J. Did you ever discourse this thing with captain Blague before them?

Lee. I cannot be positive in that.

Sol. Gen. Did those other persons, that you said you discoursed with, engage you?

Lee. Mr. Rouse and Mr. Leigh, and I went out to view the Tower, how it might be taken.

Sol. Gen. Did they engage you?

Lee. Yes, they did engage me.

Jury. My lord, we desire to have the witness asked, Whether the Captain knew he went to view the Tower?

L. C. J. Had he any intimation you went to view the Tower?

Lee. My lord, I cannot be positive in that: some time after we met the Captain, and did tell the Captain, we had viewed the Tower; but I do not remember what observations we made.

Serj. *Jeff.* Nor what he said to you?

Lee. No, nor what he said to me upon it.

L. C. J. Look you, Mr. Lee, Mate Lee, the Captain told you of this ball that was to be thrown upon Blackheath: How long ago was it?

Lee. An't please your lordship, I cannot be positive, it was five or six weeks ago, I think it was the last time I rid along with him to the King's head tavern. I went to Chancery-lane and you gave me coach-hire for nothing, and then you spoke of tossing up the ball.

L. C. J. What was it he said?

Lee. This was all. I did not know his meaning, neither did he express his meaning. He was saying, to the best of my remembrance, we shall see a ball tossed up. I do not remember he said upon Blackheath; the confirmation of it was by Mr. Rouse and Mr. Leigh; then I came to understand what the ball did mean.

Sir *James Butler.* With his lordship's leave did you speak first to the captain about the Tower, or did he speak to you? Was it your motion to him, or his to you?

Lee. I do not know but it might be my motion to him.

Sir *James Butler.* Then, my lord, give me leave to ask another. How were these mortar-pieces to be brought up, to be planted on Southwark side, to play upon the wall of the Tower?

Serj. *Jeff.* That was the other man, Sir James.

L. C. J. Is there any thing more that you would have asked of any of these witnesses? or have you any witnesses of your own?

Blague My lord, the witnesses that I have in reference to the number of men, are here, I desire, my lord, you will be pleased to order them to come in, to know upon what account I shipped them.

Jury. My lord, pray let us ask the other Leigh one question.

L. C. J The first Leigh.

Jury. We desire to know, whether he heard any thing of the ball, or tossing it?

L. C. J. He hath told you a long story of it.

Leigh. The story of Blackheath I acquainted you with it, about Mr. Rouse. There was a golden ball to be played upon Blackheath, a

thousand seamen to be at the playing of this ball, ten sea captains to manage these thousand seamen, and after the play was over, every captain to take his division apart, and treat them with punch, and after that was done, to tell them they had other work to do, and to have long-boats and arms ready, to go and seize the Tower.

Jury. Did captain Blague acquaint you with this?

Leigh. Mr. Rouse told me, captain Blague was acquainted with it: I never discoursed with captain Blague about it. Captain Blague told me, the best way was to set a ship on the other side, and shoot mortar-pieces into the Tower.

L. C. J. What would you have Mr. Wright asked.

Blague. My lord, please to ask him upon what account he was shipped.

L. C. J. Was you shipped upon the captain's ship, and upon what account?

Wright. An't shall please your honour, I was shipped upon him almost four months and three weeks ago.

L. C. J. Upon what account?

Wright. I was shipped upon him upon the account of New York, England and Holland.

L. C. J. Well, what use do you make of this evidence?

Blague. Only, my lord, if you please to ask the rest, whether I have shipped any more men, or spoke with any more than these are?

Wright. An't like your honour, I have waited upon the captain ever since I have been shipped: I have waited upon him in London, at the coffee-house, about business: since I have belonged to him, I was in pay, although we had not a ship in possession: sometimes at the mayor's court office, Mr. Briggs, sometimes with Mr. Rouse, who had something to do for captain Blague. I kept at the coffee-house commonly every day from eight or nine a clock in the morning. Sufficient persons know me in London. I have kept at the coffee-house from nine or ten o'clock in the morning till four or five in the afternoon, and so I have satisfied him about what people have inquired after him.

Blague. Call Robert Chappel.

L. C. J. Captain Blague, what would you have him asked?

Blague. Carpenter, declare to my lord how long you have been with me, and upon what account I shipped you?

Chappel. Four months and an half.

L. C. J. What besides?

Chappel. We were to go to New York. I have been shipped four months and an half to go to New York. We came to the coffee-house in Birchin-Lane.

L. C. J. Well.

Chappel. We have had the ship a month in our hands next Monday.

L. C. J. Is she fitted?

Chappel. No, she is not fitted.

L. C. J. Was she in a condition to have done any service upon the water?

Blague. Carpenter, do you hear what my lord says?

Chappel. The ship is a small vessel about 150 tun, between that and 100.

Blague. My lord asks you, if she be in a condition to do service.

L. C. J. Was she capable to do any service upon the water?

Chappel. No service at all upon the water she could do three weeks ago.

Serj. *Jeff.* A ship of 150 or 200 tun, would hold a great many people; she was to lie still, that was the mischief.

Chappel. We haled her down to the carpenter's yard; she is now in a condition to work.

L. C. J. Have you any more men?

Blague. Doctor, upon what account were you shipped?

Bellinger. For New York, England and Holland.

Blague. When were you shipped?

Bellinger. Seven weeks ago.

L. C. J. When were you to begin your voyage?

Bellinger. I belonged to the captain before he had a ship.

L. C. J. But when did you reckon to begin your voyage?

Bellinger. That I cannot tell.

Blague. My bill upon the Exchange doth specify it, Sir.

Jury. Pray, my lord, will you ask if he have any guns aboard and how many?

L. C. J. What say you? What guns are there about the ship?

Bellinger. Fourteen, Sir, and four wooden ones.

L. C. J. What are they?

Bellinger. Six above deck, four in the hold.

Blague. They are Saker guns.

L. C. J. Saker?—*Blague.* Yes, Sir.

Blague. Richard Clarke, what voyage had we?—*Clarke.* New York.

L. C. J. Surely it doth appear, that these men were shipped a great while ago.

Blague. Some of them have had a dependence upon me a great while, one hath depended upon me I believe seven months.

L. C. J. Have you any thing more to say?

Blague. No, my lord.

L C. J. Look you, gentlemen, you that are of this jury; this gentleman is indicted for conspiring the death of the king, and doing some acts in order to it, that is, endeavouring to surprise the Tower and raising of men, and preparing of shipping and guns, and this on purpose to surprise the Tower. That there was an evil design, a very wicked notorious design of seizing the king's person and killing the king, that is most certain, you have heard it by a great many witnesses, and it is a thing, I think, not to be doubted of by any. The question is, whether this man be guilty of it, and hath undertaken any thing in a rela-

tion to it? Look you, you ought to have in such cases of high treason, as you have been told, you ought to have two witnesses against a person. Here are two witnesses produced, one of them does speak very shrewdly to the case, and tells you, he had it from this person himself; that he had spoken with Goodenough about this matter about surprising the Tower, and that it was an easy thing to surprise the Tower, and that he could do it; that he had a ship ready, and he would undertake that 200 men should be ready with mortar-pieces from Southwark side, to throw them and beat down the Tower, so that it might have presently been down. First, Mr. Leigh doth say, that the captain there at the bar, that he was oftentimes with Mr. Goodenough, and Mr. Rouse, and others, who it is plain were in that design, both Rouse and Goodenough was, and that he heard Goodenough say, that the captain had undertaken it, and he says that the captain had discourse with Goodenough about it. He says, the captain asked him, in order to this, what money could be raised, and he told him there was 40,000*l.* and the captain told him, that was but a small matter, the seamen would eat up that; and Goodenough told him, there was a greater bank in Holland, that would be brought over. So that this evidence goes a great way. But then, gentlemen, you must consider whether you have another evidence or not. There is a person that you call Mate; the Mate doth give a dark kind of an evidence: he does say here, that he and the captain had discourse about the way of taking the Tower, and he believes it was in order to take the Tower; but he does say, when he heard it, nobody was present but himself, and he was of one opinion how the Tower might be taken, that is, by scaling ladders and hand-granadoes; and that the captain was of another opinion, whether it might be the better taken by mortar-pieces, thrown from Southwark side; but whether the captain had any notice of this design of taking it, he cannot tell, or whether he had any acquaintance concerning it. So that this evidence does seem to be somewhat dark. Whether this were sportive, or a trial of their skill, or whether it was a design to have counsel and advice one of another, which way to take it, I must leave it to you; whether it was done with an intent and design, for to find out the best way in order to the taking of it. But if it were only a discourse at large between them, and endeavour to try their judgments one with another, and speaking their minds one with another in that case, then this evidence doth not come home to make him guilty of the plot of taking the Tower, or taking away the king's life. He tells you, he did speak of a ball to be thrown up; but whether he ever heard of the other design that Leigh speaks of, the first Leigh, Thomas Leigh, of throwing up a ball by seamen, in order to the taking of the Tower, he knows not. Leigh says, the first witness, he does not know any thing whether this man at the bar was ever acquainted with the ball or not. If upon what you have heard, you believe there are two witnesses to prove this gentleman at the bar guilty of this design of surprising the Tower, and killing the king, and taking the Tower, in order to it in this manner; then you ought to find him guilty: but if you have not two witnesses, that do testify the thing, then, Gentlemen, under two witnesses a man cannot be Guilty,

After which the Jury withdrawing to consider of their verdict, in a short time returned, and brought him in Not Guilty.

Saturday 14th July, Lord *Russell* was brought to the bar.

Cl. of Cr. William Russell, esq. hold up thy hand. (Which he did.) Thou hast been indicted for high treason against our sovereign lord the king, and thereupon hast pleaded Not Guilty, and for thy trial hast put thyself upon the country, which country hast found thee guilty. What canst thou say for thyself why judgment of death should not pass upon thee according to law?

Ld. *Russell.* Mr. Recorder, I should be very glad to hear the Indictment read.

Att. Gen. You may read it.

Cl. of Cr. Will you have it read in Latin or in English?

Ld. *Russell.* In English.

The Clerk read to the words, "of conspiring the death of the king." (See p. 579.)

Ld. *Russell.* Hold, I thought I had not been charged in the indictment as it is, of compassing and conspiring the death of the king.

Att. Gen. Yes, my lord.

Ld. *Russell* But Mr. Recorder, if all that the witnesses swore against me be true, I appeal to you and to the court, I appeal to you, whether I am guilty within the Statute of 25 E. 3. they having swore a conspiracy to levy war, but no intention of killing the king: and therefore I think truly judgment ought not to pass upon me for conspiring the death of the king, of which there was no proof by any one witness.

Att. Gen. That is no exception.

Mr. *Recorder.* My lord, that was an exception proper (and as I think, you did make it) before the verdict; whether the evidence does amount to prove the charge, that is proper to be observed to the jury; for if the evidence come short of the indictment, they cannot find it to be a true charge: but when the jury has found it, their verdict does pass for truth. We are bound by the verdict as well as your lordship, we are to go by what the jury have found, not their evidence.

Ld. *Russell.* Without any proof?

Mr. *Recorder.* The jury must be governed by their evidence.

Ld. *Russell.* I think it very hard I must be

condemned upon a point that there was not one thing of it sworn; and therefore I think I may very legally demand arrest of judgment.

Mr. *Recorder*. I hope your lordship will consider, it is not the court can give a verdict, it must be the jury. I believe there is nobody in the court does delight in giving such judgments, especially against your lordship. The verdict is found, and the king's attorney general on behalf of the king does demand it.

Att. Gen. I do demand judgment of the Court against the prisoner.

Proclamation made for silence, whilst judgment was given.

Mr. *Recorder*. (Sir George Treby.) My lord Russell, your lordship hath been indicted, and tried, and found guilty of high treason, the greatest of crimes: your quality is great, and your crime is great: and I hope and expect, that your behaviour and preparation in this condition will be proportionable My lord, it is the duty of the witnesses to give evidence according to truth; it is the duty of the jury to proceed according to evidence; and it is the duty of the Court to give judgment according to the verdict. It is the king's pleasure signified by his attorney general, to demand judgment against your lordship according to this verdict, and therefore, my lord, I shall not delay it with any farther circumlocution. The judgment the law hath provided, and is the duty of the Court to give, is,

> "That you be carried back again to the place from whence you came, and from thence be drawn upon an hurdle to the place of execution, where you shall be hanged up by the neck, but cut down alive, your entrails and privy members cut off from your body, and burnt in your sight, your head to be severed from your body, and your body divided into four parts, and disposed at the king's pleasure. And the Lord have mercy upon your soul."

Att. Gen. Set up the other now.

Cl. of Cr. Set captain Walcot to the bar, Rouse and Hone.

Which was done, and they bid severally to hold up their hand, which they did; and captain Walcot being asked, what he could say why judgment of death should not be passed upon him, said,

Capt. *Walcot*. I have nothing to say; only I have one favour to beg of the Court; whether it be proper to beg it now or no, I can't tell.

Mr. *Recorder*. What is it?

Capt *Walcot*. I would beg the favour, that the youth my son might come and see me, and some of my friends.

Mr. *Recorder*. Capt. Richardson does not deny it to any man after he is condemned. That is a piece of humanity you need not ask: I never knew it denied.

Then Hone was asked what he could say against judgment.

Hone. I beg the same favour.

Mr. *Recorder*. Ay, ay, God forbid! You had best ask for some divine to come to you.

Then Rouse was asked the same question.

Rouse. I would speak of the disadvantages I had when I came upon my trial. When I was put upon my trial, you know very well, I begged the favour of some things: one was a copy of the indictment, when I saw a person come before me, who in his own conscience knew was the author of all these things. I have nothing to say against the judgment or verdict. I always had a great veneration for the constitutions of the kingdom. I pray God forgive them that came against me. I wish I had no more weight upon my legs, than I have in my own conscience. I prayed a copy of my indictment. These things unexpectedly came upon my trial, that I had not opportunity to speak what I should.

Mr. *Recorder*. We are content to hear you. But observe, you are to answer the question that is asked, why judgment should not pass upon you? You say you won't speak against the jury, we must not hear you, nor against the verdict.

Rouse. I have one word more, and that is, the vast difference between the indictment and their oaths. The indictment was, That such and such words and discourses passed the 2nd of March. The oaths sworn were, That the words were not spoken then, but the last of June, which was three months difference; but however the jury have pleased to find it. I must throw myself at his majesty's feet: I have nothing more to say.

Then Silence was proclaimed, and Judgment given against Walcot, Hone, and Rouse, in like manner as upon the lord Russel.

The EXECUTION of Captain WALCOT, JOHN ROUSE, and WILLIAM HONE, on Friday July 20, 1683.

Captain Thomas Walcot being drawn to Tyburn in one hurdle, John Rouse and William Hone in another, and there put into a cart, the reverend Dr. Thomas Cartwright,* dean of Rippon, and one of his majesty's chaplains in ordinary, with Mr. Smith, the ordinary of Newgate, acquainted captain Walcot, That this was the last time he had to spend in the world, and therefore desired him to make a good use of it, telling him, 'That as death 'leaves him, so judgment will find him;' and earnestly exhorted him to make an ingenuous discovery and confession of what he knew touching the conspiracy and treasons, of

* This I conclude was the same Dr. Thomas Cartwright, who was afterwards bishop of Chester, and one of king James the Second's Ecclesiastical Commissioners. See their Proceedings in this Collection.

which he had been found guilty, and received sentence to die.

To this capt. Walcot replied, That he had some papers in his pocket, of what he had prepared to say, in writing, because his memory was bad; therefore he desired they might be pulled out, and he would read them.

Then Dr Cartwright and the ordinary spake to Hone and Rouse to the effect before-mentioned, earnestly desiring them to confess the whole of what they knew; instancing some places of Scriptures, to them, as Joshua's advice to Achan, &c. 'My son, confess, and 'give glory to God, whom you have disho'noured,' &c. telling them, they would have imbrued their hands in the blood of a merciful and good prince, who had often pardoned, and gave many acts of oblivion and indemnity to his subjects; and whose reign hath preserved the purity of the Protestant religion amongst us: that we cannot enjoy more than we do enjoy: with other good admonitions for them to make clear discoveries of the truth of what they knew.

Captain Walcot, in the mean while, was preparing to read his speech.

Dr. *Cartwright* asked him, if he could discover any more than he had done already?

Walcot. I've not in the general. I told the king the thing was laid very deep: there was a gentleman with me last night. I told him what I told the king, and that was all: I told him, I thought an act of indulgence would be very necessary, because he had a great many men to take judgment of. I know not the particulars of the design; but the king hath the lord Howard, Mr. West, and others, that know more than I. I was never in council with them, nor never with them above four, five, or half a dozen times.

Then looking upon his Paper, he began his speech as follows:

"This great concourse of people do not only come here to see me die, but also to hear what I shall say; but because I would not be reproached, and thought to be an atheist when I am gone, I have two or three words to speak for my religion. I do believe in three persons, and one God, and I expect and hope to be saved by the merits and righteousness of his Son Christ Jesus, without the hope of an advantage by any merits or righteousness of my own. And I believe, that the Scriptures of the Old and New Testament are the Word of God; that 'they were not written accord'ing to the will of man, but holy men of God 'writ them as they were inspired by the 'Holy Ghost.'

"I believe that these Scriptures ought to be the rule of our faith, and the method of our worshipping of God: I believe that as Christ is the head of his church, so he is their lawgiver; that it is not in the power of any council or conclave of cardinals, or power upon earth whatsoever, to set up the precepts and traditions of men, and to make them of equal validity with the word of God. I believe it was not because the Jews rejected and crucified Christ, that he rejected them, but because they rejected his word; which appears by the three thousand that God by one Sermon of Peter's converted; they being 'pricked in their hearts, and touched in 'their consciences,' cried out, 'men and bre'thren, what shall we do? And they were 'that day added to the church.' It was certainly because the Jews rejected the word and gospel of Christ, that 'the things were 'hid from their eyes which belonged to 'their peace.' It is a dreadful thing to reject the Word of God; and it is a dreadful thing to live in a sinful course of life, till God withdraws his spirit from us: for it is said, 'It shall not always strive with man. 'Death is the wages of sin.' I believe, had not Adam sinned, he and we, his posterity, had not died. Death is said to be the king of Terrors; but it is only so to those that are terrified with a terrifying conscience, that have the arrows of the Almighty sticking in them, from convictions of great guilt, and see no hopes of mercy, have no assurance of pardon; but those that are Christ's, he takes away the terror, and horror, and sting of death; he enables them to say with Paul, 'To me to live 'is Christ, and to die is gain.' He enables not only to get unto Christ, but into Christ, and so they have 'communion and fellow'ship with the Father and the Son.' It is no hard matter to get the notions of the promises of the gospel into our heads; but unless the Lord is pleased to apply them to our hearts, we cannot believe; except we be in Christ 'as branches in the vine,' we are not Christians indeed. It was the case of poor Francis Spira: he was certainly a knowing man, but notwithstanding he had not faith to apply the promises. Christ hath said, 'That he that be'lieves in him, though he were dead, yet 'shall he live; and he that lives and believes 'in him shall never die.' So if we be able to apply the promises by the spirit of God, we may have comfort through faith: but then 'Faith is the Gift of God,' and 'Faith comes 'by hearing' the Word of God, and receiving it in the love of God.—I shall not be tedious, Mr. Sheriff; I shall be very short.

Mr. *Sheriff.* Take your own time.

Walcot. As to the present occasion of my death, I do neither blame the judges, nor the jury, nor the king's council; I only blame some men, that in reality and in truth were deeper concerned, and more engaged than I, that came in as witnesses against me, who swore me out of my life to save their own; and who for fear they should not do it effectually, contrived that, which I will appeal to you all, whether there be a probability in it or not; for they said, that I made it a scruple of conscience to have a hand in killing the king, or to embrue my hands in his blood, but was so generous as to undertake the charging his guards whilst others did it, and to the end another might do it. Truly I will appeal to all

that know me, whether they believe me so much an ideot, that I should not understand it was the same thing to engage the king's guards, whilst another killed him, as to kill him with my own hands. But, however, by their swearing against me, they have secured their own lives and estates, and made my blood the price of theirs. I confess I was so unfortunate and unhappy. as to be invited by colonel Rumsey (one of the witnesses against me) to some meetings, where some things were discoursed of, in order to the asserting our liberties and properties, which we looked upon to be violated and invaded. But it was he, and Mr. West, and some gentlemen that are fled, who were the great promoters of those meetings. I was near a quarter of a year ill of the gout, and, during that time, Mr. West often visited me, and still his discourse would be concerning 'Lopping the two sparks;' that was the word he used, meaning the king and the duke; and proposed it might be done at a play. This was his frequent discourse; for he said, then they would die in their calling; it was his very expression. He bought arms to do it with, without any direction of mine; I never saw the arms, nor I never saw the men that were to do it; though they said they had fifty employed to that end. I told several of them, that the killing the king would carry such a blemish and stain with it, as would descend to posterity; that I had eight children, that I was loth should be blemished with it; and withal I was confident the duke of Monmouth would revenge his father's blood, if it were but to vindicate himself from having any hand in it. Mr. West presently told me, that the duke of Monmouth did not refuse to give an engagement, that he would not punish those that should kill the king.

"And now I desire to forgive all the world from the very bottom of my heart; and I pray God of his mercy from my heart to forgive them, even Mr. Sheppard, who delivered me up, who promised to carry me into Holland; but instead of that, he brought me into the condition wherein I now am. I do desire with all my heart to forgive the witnesses, and withal, do earnestly beg, that they may be observed, that some remarks may be set upon them, whether their end be peace, and that they die the common death of all men. Certainly, though it be the law of the land I ought to die, and the king may justly and reasonably put me to death for being in those meetings where a war was debated; yet I think these men are guilty of my blood, that were as deep in as I, and have betrayed me, and taken it away. Then in the next place, I beg leave, Mr. Sheriff, to speak one short word of advice to my friends, that hath been often given to me, though I was not so fortunate and so happy as to take it; and that is, that they would neither hear any man speak, nor speak themselves, that which they would not have repeated; for there is no such thing as faith in man to man, whatever there is in man to God: Either the tears of a wife, or a family of little helpless children, something or other, will tempt and provoke men to betray one another. When God hath a work to do, he will not want instruments, for he can make them; nor will he want a way to do it, for he can contrive it, and bring it to pass. And I do most heartily desire, and my earnest prayer to the Almighty is, That this may be the last blood spilt upon this account. I know, acts of indulgence and mercy in the king would make him much easier in his government, and would make his people sit much easier under it; and that the Lord may incline his heart to mercy, ought to be the prayer of every good man. What hath happened, and what hath been the present occasion of our calamity, I suppose every man knows, what provocations have been on the one hand, fears and necessities, jealousies and sufferings of the other, I will not intermeddle with, resolving to use my utmost endeavour to make that peace and reconciliation with my God, which is impossible for me to make with man; and to make it my hearty prayer to the great God, before whom I am in a little time to appear, that he would staunch this issue of blood, and find out some other way to preserve these kingdoms in unity and peace to the honour and glory of his great name, and the eternal comfort of his people.

"One word, Mr. Sheriff, I desire leave to speak as to Ireland, because the king pressed it hard upon me, and several people have been with me about Ireland, how far Ireland was concerned in this matter. I am very inclinable to believe, could I have charged any body there, with being engaged in the matter for which I suffer, I might have had my life; but by the blessing of God I will charge no man wrongfully, no not to save my own life; and these being some of the last words I am to speak, I do aver here, as in the presence of God, before whom I am now going to appear, that I do not know an Englishman nor Protestant in Ireland engaged in it. What I did know, was only of one Scottish gentleman in the north; and the king knows it, but he says he does not believe it. For they that were concerned, I was never in any of their councils: I never saw any of those lords but the duke of Monmouth, and that was, I believe, above six months ago. I never saw nor spoke with one lord, only my lord Howard. I heard my lord Howard say, That they did not value Ireland, for it must follow England.

"I have no more to say, Mr. Sheriff; but truly you will do an act of a great deal of charity if you will prevail with the king for an act of indulgence and liberty to his people: I think so: And so the Lord have mercy upon me."

Dr. *Cartwright*. You blame them for that which is their virtue, and not their crime; that they have been witnesses for the king.

Walcot. I was not for contriving the death of the king, if you will believe me.

Dr. *Cartwright.* You blame them for betraying of you in contriving the war, upon which the death of the king must have followed, if your treason had gone forward, for else you could not have defended yourself from that justice to which he hath brought you; and therefore for you to lay that as a crime upon your witnesses, is indeed very strange.

Walcot. Sir, I think it was but reasonable, that I should suffer that is due from justice, and reasonable by the law; but these men, they did not come in against me, till they did it to save themselves.

Dr. *Cartwright.* Better late than never: A man had better save his soul and body too, than die, as now you do, for crimes that ought to make every good man's heart relent; and therefore for your blaming them, it was for that which was their duty to do; they have not committed a crime in that, but a very meritorious act.

Walcot. They have revealed it with that aggravating circumstance, which I think no rational man will be guilty of.

Dr. *Cartwright.* That circumstance which you call aggravating, is no aggravation at all; but is rather a mitigation of your crime, to make them believe that you were tenderer of the king's person, than to shoot him when he was not armed. But you confess you were consulting this crime.

Walcot. I was not to have a hand in the king's death.*

Dr. *Cartwright.* But it was proposed when you were there.—*Walcot.* It was so.

Dr. *Cartwright.* And it was agreed to be done.

Walcot. Truly I do not know how far it was agreed; I was there many meetings.

Dr. *Cartwright.* These many meetings you could not but be sensible of.

Walcot. There were several meetings, wherein the business of the king's life was never spoke of.

Dr. *Cartwright.* That was agreed in those meetings; but you had a tenderer conscience.

Walcot. I say, they were for asserting our liberties and properties.

Dr. *Cartwright.* I would fain have you explain that.

Walcot. Truly, Sir, since you press me to speak, we were under general apprehensions, and so were those lords that are likely to suffer, as I have heard; they were under general apprehensions of popery and slavery coming in.

Dr. *Cartwright.* What sign was there of it? You had no persecution at all; you were allowed by law to meet five in a house, besides those of the family. It is true, the conventicles have been disturbed of late, and I would have you look upon it as a judgment of God to bring you to this for forsaking the church of England: You have forsaken communion with that church in that way you were instructed from your youth.

Walcot. I do not come here to dispute of religion, but I come here to die religiously, if it please God to enable me.

Dr. *Cartwright.* I pray God enable you: But I would not have you charge that as a crime upon the witnesses, which was their duty.

Walcot. I cannot tell how to excuse my witnesses for aggravating things against me, and making them worse than really they were.

Dr. Cartwright going to reply,

Walcot. Pray Sir, give me leave; for a man to invite a man to a meeting, to importune him to this meeting, to be perpetually soliciting him; and then deliver him up to be hanged, as they have done me———

Dr. *Cartwright.* It was a crime to solicit you to those meetings; but when you were in, it was a duty in you and in them to reveal it: If God had given you the grace to reveal them, the turn had been theirs, which now is yours. And whereas you say you cannot excuse them, that is uncharitable.

Walcot. I do forgive them, and I desire with all my heart God would forgive them.

Dr. *Cartwright.* You confess you were guilty enough to take away your life?

Walcot. I was so. The same measure we mete to another, that measure God will mete to us: Then, Sir, I do leave it to God.

Dr. *Cartwright.* Then you pray this may be the last blood spilt upon this account?

Walcot. I do so.

Dr. *Cartwright.* Would you not have traitors brought to their end? You talk of spilling blood, as if it were innocent blood now spilt, when you do confess and own the guilt. But I will give you no further disturbance, but my prayers to Almighty God for you, that God would give you mercy.—And then turning to Hone,

Dr. *Cartwright.* Mr. Hone, give glory to God, and unburden your conscience; for you have but a short time to stay here.

Hone. I have nothing further to say, but that I have been guilty of the crime.

Dr. *Cartwright.* You are so.

Hone. Yes, I am guilty of this crime according to the law of the land.

Dr. *Cartwright.* Aye, and according to the law of God.—*Hone.* Yes.

Dr. *Cartwright.* You say, according to the law of the land, a man may be sworn out of his life by false witnesses; but you were guilty of conspiring the death of the king, and raising an insurrection.

Hone. Truly I must say, as the captain well minded, I was drawn in. 'Thou sawest a 'thief, and thou consentedst with him:' So I say, that I was drawn in: I saw the thief, and consented; I have looked upon myself since to be the more guilty of blood, and my circumstance was to be drawn in, and ensnared; for I never was at any of their meetings, none of their cabals, but in a public coffee-house or

* See the observations of Mr. Fox, as quoted hereafter in Rumbold's Case, A. D. 1685.

tavern, where they discoursed the matter of fact; and I was to meet the king and the duke of York, but I did not know at that time when, or where, nor what was my business.

Dr. *Cartwright.* But you were to assist?

Hone. Yes, I promised that, to assist.

Dr. *Cartwright.* Do you beg God and the king's forgiveness for it from the bottom of your heart, that you have been guilty of this? 'For if the blind lead the blind, both shall fall 'into the ditch;' as well he that leads, as he that is led, although he that leads may fall deeper. There are circumstances make one man's crime greater than another; the greatness of theirs does not lessen yours.

Hone. I believed that then I was very near another snare: I was resolved to go down into the country, and not meddle in the thing at all; and had been in the country, but meeting with Keeling, (I freely forgive him for whatsoever is done) he called me; and discoursing with him, I did say I was for killing the king, and saving the duke of York

Dr. *Cartwright.* Why was you for saving the duke of York?

Hone. I do not know what to say as to that: There was no reason.

Dr. *Cartwright.* What was your own private reason for killing the king, and saving the duke of York?

Hone. As to that, I think this: That the duke of York did openly profess himself to be a Roman Catholic, and I did say, I had rather dispose of the king than the duke of York.

Dr. *Cartwright.* Had you rather a Papist should reign over us, as him you take to be, than the king?

Hone. I do not know what to say to that.

Dr. *Cartwright.* That does deserve a reason, Mr. Hone; you ought to give some reason of that; you cannot but have some reason. If you had a design to kill the duke, and save the king, then it might be to prevent popery; but you say the quite contrary. God in Heaven forgive you for your murderous design!

Hone. I know as little of this as any poor silly man in the world; I was fain to gather it; I had it not so downright; I was drawn into it; however, I am now to die: As for the witnesses, I desire the Lord to forgive them.

Dr. *Cartwright.* They have not wronged you, they have done their duty.

Dr. *Cartwright.* Rouse, What say you?

Rouse. "As a man, and a christian, in the first place, as God hath made me a christian through his grace, that the world may understand, that I do not die as captain Walcot says, an Atheist; I do here declare, in the presence of God, and this vast number of people, what faith I die in; in that very faith which was once delivered, and in the belief of that doctrine which the church of England makes profession of, and is agreeable to the word of God, being founded upon the doctrine of the prophets and apostles, whereof Jesus Christ is the corner-stone. There have been various opinions concerning me, upon the account of the various employments that I have been exercised in, both here and beyond sea: it has been my lot to fall under such circumstances and such misrepresentations and censures, upon the account of some public employments that I have been in for the king, and after I returned from Flanders, upon the account of disbanding; it was almost morally impossible for such a one in my capacity to stand right in the affections and opinions of all people. When I was employed in Flanders in the payment of that army, I was then between two rocks; I will leave it to the judgment of all sorts of people. You know the country, I need not particularize, nor reflect upon opinions, and the like. But I having been bred up in England, and had that education it pleased God to give, I was not fond of, nor carried off with, that debauchery in those times; and sometimes, more than once or twice, it was my lot, that I was like to have been murdered for pleading for, and justifying the actions of the king of England. Since my return, and being employed under sir Thomas Player, and some others, about disbanding, there it came to my lot, because I could not humour some gentlemen, who neither feared God nor honoured the king, (I will not say so of all; for I know some were very worthy gentlemen, that scorned any of those actions, which some would attempt. There is one worthy gentleman I can speak very honourably of) that so they might have their pockets full of money, did not value how the accounts were stated; and at the very same time I was under many temptations, of handfuls of guineas in my hand to do so and so, to cheat the king; and because I would not do that, I was looked upon as a Jesuit. I did waive all these things under those circumstances. It hath been my lot likewise, being employed by sir T. P. and the rest of the commissioners, to fall into those companies and places where my lord Shaftesbury and others have been; and have had some kind of discourse, which was not treason, but rather a thing that I ever abhorred and declared a detestation of. Since these hurly-burlies, concerning parliaments going off and coming on, did discontent the people upon one account or another, I confess I have been a hearer, and have understood too much of some kind of meetings, which I pray God forgive them for, and especially those that call themselves Protestants, being ten thousand times worse than any others. That there have been such kind of designs, and meetings, and clubs, I have not been ignorant of; God forgive me that I have not been as careful, and as diligent, and as ready and forward to discover it a great while since! That I ever had a hand in it, or the least thought, or resolution, or intention, to appear in it; but rather, on the contrary, have declared my opinion against it both in the sight of God and man, as a breach of the laws of God, and the laws of the land, and contrary to our duty, who are bound to pray for the king, and all that are in authority, I do declare, in the presence of God, I am a

perfect stranger, and I thank God my conscience is clear. I have acquainted his majesty in counsel, and I have had the honour to be admitted into his majesty's presence in private almost half an hour, on Saturday was se'nnight where I was as clear and above-board, and as faithful to his majesty, as I could be, in an humble manner, according to my duty; where I offered to have some time and place allotted, that I might give him a whole scheme of the business; for there were a great many gentlemen that had a respect for me. It was their opinions, that I had a general knowledge of all the clubs, and all the designs, that ever were since the king came in; but they were under a mistake. I gave his majesty an account to the best of my knowledge; and when I had done, his majesty seemed to be pleased, and to thank me for it; but before I had power to put it in writing, and wait upon his majesty, the providence of God did so order it, the council thought it fit, that I should be committed to prison, where I was some days. I have had more kindness among Heathens and Indians, I pray God to forgive them for it: I had not liberty to send to my wife, big with child in two days, where I was.

"Sir, I shall not hold you in suspence, and multiply words, but what is most proper to this occasion. What I have given to his majesty in council and what I have spoken to his majesty in private, is nothing but the naked truth to clear my own conscience, that I may not go out of the world with any thing upon me: I wish those that call themselves Protestants would discharge their duty better to God and the king, than either I or the best subject ever did. I have looked upon it as an obligation, ever since I knew what it was to be a man, to carry myself obedient to those that God has set over me, especially the king, and those that are in authority; and I have made it my practice to pray for the king, as for my own soul. That it has been my lot to be acquainted with those vanities of clubs, and persons, no rational man will wonder, considering the circumstances and places I was called to. There is one particular gentleman, Mr. Sheriff, I must desire the favour to clear myself by something that I took occasion to speak of yesterday. I did acquaint you, Mr. Sheriff, with what I had spoken to the king, how I was interrupted in the further discovery of what I had a mind to say. What was further said yesterday, it was nothing but the naked truth: in the first place as to what was afterwards discoursed of, as to some particular persons, namely and particularly sir Thomas Player, I must do justice to all the world. That he hath been acquainted with the lord Shaftesbury none here will wonder; but that he hath been very shy of his company since he came out of the Tower. For he told me many times he never was in his company but once; for he did not like some things, and saw some designs, that he was afraid were going on; and thereupon sir Thomas Player was so as to break off. I always looked upon him as a very loyal subject, and I must declare in the presence of God, and all these people, I never heard him speak one dishonourable word of the king; what he may have had with others, is best known to himself. I have been in several clubs eating and drinking, where it has been discoursed to accommodate the king's son, the duke of Monmouth. That there was a design to set up the duke of Monmouth, I will not say, while the king reigns; though some extravagant hot-headed men have taken upon them to discourse these things, but not any worthy man; I know those that were worthy to be called by that name, have declared in my hearing, that in opposition to the duke of York, if the king be seized, they should stand by the duke of Monmouth. There are others, (I will not give nick-names to any; you are wise men, and know what I mean by speaking in the general) that were for a commonwealth; and some there were, two or three persons, (I shall be as plain as I can, and I hope you will bear with me, since it came to my lot to come to the knowledge of it; some were) for the duke of Monmouth, some for a commonwealth, and some, but very few, not worth naming, were for the duke of Bucks: But that I think fell at last between these two, being the greater part, as far as I did apprehend by discoursing here and there in the city, which I did very frequently do. But the way of these gentlemen's discoursing these things was only one at a time, especially a very industrious gentleman, that hath made it his practice a long time, (for it hath been my lot to be acquainted but two months, and that too long) which is the witness that comes against me; and I pray God to forgive him, and I blame him not for discovering me, but for the words he spake himself, by way of instigating me to enter into a design against the king; they were his own words, and not mine. I blame him not for discovering any thing whereby the king may be served. He did tell me several times there were clubs in London, but I could never get out of him the places where the clubs were. Yet I endeavoured what possibly I could to come to the bottom of that design; for my intent was to make a faithful and true discovery that I might not go to Whitehall, or a justice of peace, with an idle story, or a sham; But at last I got out of them that Rich. Goodenough was chiefly instrumental: This was a very few days before notice was given, that this certain person Thomas Leigh the dyer, was sworn against by one How: I asked him the meaning; He told me, that How was a very rascal. I asked Leigh, Sir, what course shall be taken? For, what by the Doctors-commons of the one hand, and what by the persecutions of the other, we must think of a way how to relieve it. There is some design in hand, says Leigh: don't you know; No, said I, I would be glad to hear, there is an invasion, said he going on, a design against the king and the government; but that was only a fallacy; but he

discovered afterwards to me, that there was a resolution, and a certain number of people about the city and the nation, to make an attack upon the Tower of London, upon the city of London, upon Whitehall, and upon St. James's: I said, what do you design then? Have a care that you don't shed more innocent blood; for the land is stained with blood too much already. No, saith he, the resolution, as Mr. Goodenough saith, is not to spill a drop of blood, but only to secure the king's person, that the papists do not kill him; and then, saith he, we will deal with the duke of York as we please. They were his own words, to the best of my remembrance. Afterwards this gentleman was sworn against by one Mr. Keeling in East-Smithfield; saith he, he is a rogue and a dog, and I have seen him but once these nine months, and I had no discourse, but only drank a glass of drink; which proves since to the contrary. Being then in company at the King's-head tavern in Swithin's-ally, near the Exchange, news was brought, he was sworn against: He did not know what to do, but found out a place near London-wall, and desired me to go to one or two about the matter; he knew not how to obscure himself, this house was beset, messengers after him, and likewise a kind of judgment or execution; how to put both ends together, he knew not. I told him, if he would, I had a bed; he might go to my house. I never heard a word from Rich. Goodenough, one way nor another, of any design against the king and the government, whom I have known this seven years; only this Lee told me, his hand was as deep as any other. It is true, this gentleman comes and swears against me, that I should be the only person to engage in taking the Tower of London. Sir John ——— you know very well in what capacity I have been, and how very uncapable I was in my person to take the Tower of London. I speak in the presence of God, before whom I am to appear in a few minutes, I never had any such thought, never had any such desire, never consulted with any persons of quality, never discoursed of any arms in order to it; but only this I was saying. This fellow being set on, (and I think a more proper person than any man in the world) for that he was a little low in the world, he was under a temptation of being thrown out by an Anabaptistical church, for some kind of failings; he was under a temptation to make himself somebody; therefore he did close with Mr. Goodenough, and some others; and when the first proclamation came forth he himself told me, (I never knew it before) that Rumsey, capt. Walcot, Nelthrop, and Goodenough, and West, were concerned in this design; he was the man told me; And when the second proclamation came out, then he could tell me of those too; I told him he was a wretch he had not discovered it betimes. As to his swearing against me, for which God forgive him, that I had a hand in taking the Tower of London; the thing is this: He knew I was intimately acquainted with a certain captain, one Blague, who was my servant twenty one years ago in Virginia: he hath been a very faithful and honest servant, I believe to his majesty for these fifteen years, and particularly five years, in three of his majesty's men of war. I know very well the man is of such a principle, that he abhors to engage in any wicked design. But only Leigh discoursing at random about taking the Tower, captain Blague gave this answer (for he is a very jocular man:) If I were of a mind to take it, were it for the service of the king, if there were an enemy coming in, saith he, I would with six ships well mann'd, and armed with guns, undertake to take the Tower. Upon what account he said it, I don't now know; but I believe in my conscience he had no more design to put such a thing in practice, than I have to cut my own throat at present. Captain Blague had heard these discourses *pro* and *con*, saith he, two or three hundred men would do it: It is weak in such a place: I wonder his majesty does not make it stronger. Now, when he came to swear, as soon as he was taken up, he took occasion to swear against me, all the discourse he used in pressing me to undertake this design."

Sheriff *Rich.* Pray, if you have any thing that was not told in court, discover it, but you need not go over that which was in court.

Rouse. Mr. Sheriff, I have nothing at all to say, either to blame the judges, or the jury, or the witnesses themselves, the greatest of all. I thank God, I was not any way to have had any hand in it: but the very words themselves, that came out of his mouth, he makes me the author of; but I freely forgive him, as I desire God would forgive me: though he did tell me positively there were five hundred arms to be brought out of the country. I heard of such a thing, I confess, here and there; but could never know the authors of it, nor the clubs where it was discoursed: it was lately that he told me, Goodenough told him, that the king was to be taken off as he came from Windsor; that there were several things to be done in order to it; that they wanted a place of meeting: and some thought of Salisbury-Plain, and some of Black-heath, but the most convenient place pitched upon was Black-heath. They were discoursing how to gather the people together; some were for communicating it privately, others for a ball. They asked my thoughts: said I, The best way will be, if you throw up a silver ball, to get the people together: for my design was to get what I could out of them. Thereupon he went to Mr. Goodenough, and discoursed him, and told him, that my opinion was, to throw up a silver ball, and declare, all those that will come and drink a bowl of punch shall be welcome; and that by this means they would have gathered thirty or forty thousand men in two or three days time, which otherwise would have been a fortnight a-doing: but for himself, I will not blame him, nor lay any thing to his charge of which he is not guilty. I must needs give

him his due. I do not remember. that ever he insisted upon shedding of blood; but that he hath discoursed in very opprobrious terms, and base language, of the duke of York, by calling him rogue and dog, and such things. And that we will do his work: that is true. And, that after the king's decease, the duke of Monmouth, having a vogue with the people, must of necessity succeed. I cannot tell what I can say more as to that; that is the chief thing I have to say, if I have not forgot any thing.

Sheriff *Rich*. Mr. Rouse, you would do well to name those persons that were with you in that consultation.

Rouse. There was no consultation at all, Sir. That I had was from this Thomas Lee's mouth himself, That there were five hundred arms to be brought in: that he had it from Richard Goodenough, and Nelthrop, and Mr. West; and that Mr. West particularly knew from whom these arms were to come; for he gave me a hint, that part of the arms were bought by Mr. West.

Sheriff *Rich*. Who proposed the way of the ball?

Rouse. Sir, he was saying, there were several propositions made in the club where Goodenough was, and some thought of one way, and some another; but they could not find out a proper way. Saith he, what do you think? Said I, if the people meet together, they may throw up a ball; just in that careless way I said so. So he came to me afterwards, and said, that he had discoursed with Mr. Goodenough, and Mr. Goodenough told him, that there were forty thousand pounds in bank, and if such a ball cost thirty or forty pounds, it mattered not, to carry on such a design as that was.

Here Captain *Walcot* spake.

Capt. *Walcot*. Sir, I desire you to take notice of this, among other things, that so far as I ever heard of this business, it is of no longer a date than August or September last: I would not have this consequence of it, so as to stifle the Popish plot.

Sheriff. Do you know any thing of the Popish plot, that hath not yet been discovered?

Walcot. No, Sir.

Hone. I had but the knowledge in March last of this business.

Walcot. I do not know, nor ever heard, that it was older than August or September last.

Sheriff. Ordinary, do your office.

Ordinary to Walcot. Have you fully discharged your conscience?

Walcot. I have.

But it being said, that *Rouse* was interrupted.

Sheriff *North*. If you have any thing to say Mr. Rouse, go on, but do not make repetitions.

Who pull'd his Paper out of his pocket, and look'd on it.

Rouse. He declared further, Mr. Sheriff, that when once the thing came so far, that the Tower and the city were taken and so many men gathered together, they would quickly increase; and the method was to go to Whitehall with swords in their hands, and to demand privileges and liberties, not to take away the king's life, but only let the duke of York look to it: for he was resolved upon it, that he should not succeed the king. Then he delivers another paper, being his petition to the king, and some more notes in short hand.

Ordinary. Have you fully satisfied your conscience?

Rouse. I have, Sir, a word or two to speak to the people. I have discharged my conscience, as to any thing as to what I was acquainted with. It had been happy for me, if I had not heard of it; but that I had a hand in it, thank God, I am free.

Dr. *Cartwright*. You had a hand in the concealing?—*Rouse*. That I had.

Dr. *Cartwright*. And in maintaining the correspondency without discovering it, and you do diminish your crime.

Rouse No, Sir, I don't desire it. Mr. Sheriff, I do freely acknowledge and confess, that it is just in God in the first place, and righteous and just in the king, that I die; and that I die justly for concealing it. I would lay no blame upon the king, nor any other person in the world. I did not conceal it upon any account to his majesty's prejudice, nor any man in the nation; I hope God will give more grace to those persons that do succeed. I beg a word or two; I had almost forgot, as a man, and as a Christian, That it is a thing of such evil consequence, I have found it by bitter experience now, for such and such public places to be visited, especially by those that are professors of the Protestant religion, and particularly coffee-houses, where it is very well known too much time is spent, and families, and wives, and children, suffer too much: I pray God the people may take notice of it, and lay it to heart, that spend their time so, thinking it is but a penny and a penny, and so discourse of state affairs, as if so be they were God's counsellors in the goverdment of the world, running from the coffee-house to the tavern, and from the tavern to the coffee-house, which hath been the debauchery of this age; and so bring them into this dilemma, to discourse of those things neither pleasing to God, nor the king, nor themselves, but their prejudice. The profanation of the Sabbath-day is commonly discoursed of in this place, God forgive me for not observing it as I should! I pray God those that follow me may be more careful of their duty to God and man, for the good of themselves, their souls, and their families; those that are young especially, and coming up, that they may chiefly mind their concerns for eternity, and that they would pay their duty and homage to the king, and those that God has set over them; and not neglect that great command, to pray for the king, and all that are in authority.

Being asked if they had any thing more to

they said, No. Mr. Ordinary then prayed with them, and sung a psalm, and then they desired to pray themselves; which was granted.

Having ended their respective speeches and prayers, the executioner did his office.

The EXECUTION of LORD RUSSELL.

The next day was appointed for the execution of lord Russell.

About nine in the morning the sheriffs went to Newgate, to see if my lord Russell was ready; and in a little time his lordship came out, and went into his coach, taking his farewel of his lady, the lord Cavendish, and several other of his friends at Newgate. In the coach were Dr. Tillotson and doctor Burnet, who accompanied him to the scaffold built in Lincoln's-Inn-fields, which was covered all over with mourning. Being come upon the scaffold, his lordship bowed to the persons present, and turning to the sheriff, made this following speech.

"Mr. Sheriff;

"I expected the noise would be such, that I should not be very well heard. I was never fond of much speaking, much less now; therefore I have set down in this paper all that I think fit to leave behind me. God knows how far I was always from designs against the king's person, or of altering the government. And I still pray for the preservation of both and of the Protestant Religion. Mr. Sheriff, I am told, that capt. Walcot yesterday said some things concerning my knowledge of the plot: I know not whether the report is true or not."

Mr. *Sheriff.* I did not hear him name your lordship.

Writer. No, my lord, your lordship was not named by any of them.

Ld. *Russell.* "I hope it is not; for, to my knowledge I never saw him, nor spake with him in my whole life: and in the words of a dying man I profess I know of no plot, either against the king's life, or the government. But I have now done with this world, and am going to a better: I forgive all the world heartily, and I thank God I die in charity with all men; and I wish all sincere Protestants may love one another, and not make way for popery by their animosities. I pray God forgive them, and continue the Protestant Religion amongst them, that it may flourish so long as the Sun and Moon endure. I am now more satisfied to die than ever I have been."

Then kneeling down his lordship prayed to himself; after which Dr. Tillotson kneeled down and prayed with him; which being done, his lordship kneeled down, and prayed a second time to himself; then pulled off his peruke, put on his cap, took off his cravat and coat, and bidding the executioner, after he had laid down a small moment, do his office without a sign, he gave him some gold; then embracing Dr. Tillotson and Dr. Burnet, he laid him down with his neck upon the block, and it was cut off at two strokes.

The Executioner held up the head to the people, as is usual in cases of treason, &c. which being done, Mr. Sheriff ordered his lordships friends or servants to take the body, and dispose of it as they pleased, being given them by his majesty's favour.*

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* Lord Russell had, in lord Stafford's Case, [see Cobb. Parl. Hist. as there referred to] denied the king's power to remit any part of the sentence. (As to a variance in the execution from the terms of the sentence, see vol. 7, pp. 1539, 1563, and also the Case of lady Lisle, A. D. 1685, in this Collection). Upon the conviction of lord Russell, the king inexorably resisted all applications for a pardon, though to obtain it 100,000*l.* are said to have been offered by the earl of Bedford to the duchess of Portsmouth. The king even refused the application of Russell's admirable wife (though daughter to Southampton) for a respite of six weeks. The parts of the sentence which were to follow the beheading, he however remitted; and gratified the detestable malignity of his cold and selfish heart, by saying, as has been related, "Lord Russell shall find that I am possessed of that prerogative, which in the Case of lord Stafford he thought proper to deny me." Echard mentions this as a "sarcastical glance at the lord Stafford's Case." Hume and Dalrymple relate the anecdote withwithout a comment, or the slightest hint of disapprobation: but Mr. Fox well observes, "Charles's ill-timed boast of his intended mercy to Essex, and the brutal taunt with which he accompanied his mitigation (if so it may be called) of Russell's sentence, shew his insensibility and hardness to have been such, that in questions where right and feelings were concerned, his good sense and even the good taste, for which he has been so much extolled, seemed wholly to desert him." Blackstone also (Comm. Book 4, ch. 32, towards the end) reflecting on Russell's conduct in Stafford's case and Charles's speech of Russell, says, "One can hardly determine (at this distance from those turbulent times) which most to disapprove of, the indecent and sanguinary zeal of the subject, or the cool and cruel sarcasm of the sovereign." In the duke of Monmouth's Journal, it appears, that the king in conference with Monmouth, "falling on the business of the lord Russell, said, He inclined to have saved him, but was forced to consent to his death, otherwise he must have broke with his brother. And when Monmouth was going to remonstrate how cruelly that noble lord had been dealt with, the king bid him *think no more of it.*" In a council called by king James after the landing of the Prince of Orange, the king addressing himself to the earl of Bedford, said,

My lord, you are a good man, and have a great influence; you can do much for me at this time." To which the earl replied, "I am an old man, and can do but little: I once had

The PAPER delivered to the Sheriff by my Lord RUSSELL.

I thank God I find myself so composed and prepared for death, and my thoughts so fixed on another world, that I hope in God I am now quite weaned from setting my heart on this. Yet I cannot forbear spending some time now, in setting down in writing a fuller account of my condition to be left behind me, than I will venture to say at the place of execution, in the noise and clutter that is like to be there. I bless

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a son, who could now have been very serviceable to your majesty."

See the Note to vol. 4, p. 989, of this Collection.

It is proper to add, that I have not found in Burnet, North, Coke, Oldmixon, Rapin, Kennett, Ralph, or Harris, or in the article Lord Russell, in the Biographia Britannica, or in Bulstrode, Reresby, or Welwood (the two last of whom, indeed, are extremely brief on the subject of these plots) any mention of Charles's unfeeling speech upon remitting some circumstances of Russell's punishment. Echard, Hume, and Dalrymple relate it, without mentioning any authority, and Blackstone refers only to Hume. In relating the intercessions which were made for lord Russell, Dalrymple, Appendix, part 1, p. 59, tells us, that it appears from a letter of Barillon, dated July 19th, 1683 (in the Dépôt des Affaires Etrangères, at Versailles) that upon lord Russell's condemnation, the younger Rouvigny [lady Rachel Russell's mother was a Rouvigny, and I suppose the younger Rouvigny mentioned by Dalrymple to have been lady Rachel's first cousin] begged the life of Russell from Louis the 14th; that Louis consented to write to Charles in his favour; that Barillon told Charles, Rouvigny was coming over with the letter, but that Charles answered, 'Je ne veux 'pas empêcher que monsieur de Rouvigny ne 'vienne pas ici mais milord Russell aura le 'col coupé avant qu'il arrive.' I transcribe this exactly as I find it in Dalrymple, yet it may be questioned whether Barillon ever wrote it; since, not to mention other faults in the phraseology and structure of the passage, most undoubtedly the words 'empêcher que mon-'sieur de Rouvigny ne vienne pas ici,' cannot signify, as sir John interprets them, 'to prevent monsieur de Rouvigny from coming here.' And in the only other imaginable interpretation of those words, they would reduce the whole extract to nonsense.

[Since I wrote the preceding paragraph, I accidentally looked into the 8vo edition of Dalrymple, 1790, and I find that there sir John omits the pretended extract from a letter of Barillon (some one who understood French had, I conjecture, pointed out to him the internal evidence of its spuriousness) and changes altogether his method of relating the story. He mentions the interference of Louis, &c. in his narrative (part 1, book 1, p. 48), where I do not find it in the former edition, and in his Appendix, p. 119, by way of authority, he says merely, "Barillon's Letter of 19th July, 1683, gives the account which I have given of Louis 14th interposing to save the life of lord Russell."]

Dalrymple likewise gives us the following as an extract from the MS. Notes of lord Dartmouth (the Secretary of State to queen Anne) upon bishop Burnet's History: "My father told the king, the pardoning of lord Russell would lay an eternal obligation upon a very great and numerous family, and the taking his life would never be forgotten; and his father being alive, it would have little effect upon the rest of the family besides resentments; and certainly there was some regard due to lord Southampton's daughter, and her children. The king answered, All that is true; but it is as true, that if I do not take his life he will soon have mine; which would admit of no reply."

He then gives us (from the Paper Office, as I understand him) "the Petitions of the earl of Bedford and of lord Russell for lord Russell's life, mentioned in his Memoirs," [I can find only one Petition, that of the earl of Bedford, mentioned in the Memoirs, part 1, book 1, p. 32, Note: the other Petition probably is what sir John, in the next page, calls one of lord Russell's Letters to the King: and if so, he does not speak of it fairly], as follows:

"To the King's Most Excellent Majesty.

"The humble PETITION of WILLIAM Earl of BEDFORD:

"Humbly sheweth;

"That could your Petitioner have been admitted into your presence, he would have laid himself at your royal feet, in behalf of his unfortunate son, himself and his distressed and disconsolate family, to implore your royal mercy; which he never had the presumption to think could be obtained by any indirect means. But shall think himself, wife, and children, much happier to be left but with bread and water, than to lose his dear son for so foul a crime as treason against the best of princes, for whose life he ever did, and ever shall pray more than for his own.

"May God incline your majesty's heart to the prayers of an afflicted old father, and not bring grey hairs with sorrow to my grave.

"BEDFORD."

"To the King's Most Excellent Majesty.

"The humble PETITION of WILLIAM RUSSELL:

"Most humbly sheweth;

"That your Petitioner does once more cast himself at your majesty's feet, and implores, with all humility, your mercy and pardon, still avowing that he never had the least thought against your majesty's life, nor any design to

God heartily for those many blessings, which he in his infinite mercy hath bestowed upon me through the whole course of my life; that I was born of worthy good parents, and had the advantage of a religious education, which I have often thanked God very heartily for, and looked upon as an invaluable blessing; for even when I minded it least, it still hung

change the government; but humbly and sorrowfully confesses his having been present at those meetings, which he is convinced were unlawful and justly provoking to your majesty; but being betrayed by ignorance and inadvertence, he did not decline them as he ought to have done, for which he is truly and heartily sorry; and therefore humbly offers himself to your majesty to be determined to live in any part of the world which you shall appoint, and never to meddle any more in the affairs of England, but as your majesty shall be pleased to command him.

"May it therefore please your majesty, to extend your royal favour and mercy to your Petitioner, by which he will be for ever engaged to pray for your majesty, and to devote his life to your service.

"WILLIAM RUSSELL."

In the Biographia, is inserted the following Letter,* delivered by lady Rachel Russell to the duchess of York:

"May it please your Highness;

"The opposition I have appeared in to your highness's interest, has been such, as I have scarce the confidence to be a petitioner to you, though in order to the saving of my life. Sir, God knows what I did, did not proceed from any personal ill-will, or animosity to your royal highness; but merely because I was of opinion, that it was the best way for preserving the religion established by law: in which, if I was mistaken, yet I acted sincerely, without any ill end in it. And as for any base design against your person, I hope your royal highness will be so just to me, as not to think me capable of so vile a thought. But I am now resolved, and do faithfully engage myself, that if it shall please the king to pardon me, and if your royal highness will interpose in it, I will in no sort meddle any more, in the least opposition to your royal highness; but will be readily determined to live in any part of the world, which his majesty shall prescribe, and will never fail in my daily prayers, both for his majesty's preservation and honour, and your royal highness's happiness; and will wholly withdraw myself from the affairs of England, unless called by his majesty's orders to serve him, which I shall never be wanting to do to the uttermost of my power. And if your royal highness will be so gracious to me, as to move on my account, as it will be an engagement upon me, beyond what I can in reason expect, so it will make the deepest impressions on me possible; for no fear of death can work so much with me, as so great an obligation will for ever do upon, May it please your royal highness, your royal highness's most humble, and most obedient servant, W. RUSSELL."

Newgate, *July* 16, 1683.

In the same work is inserted the following Letter from lord Russell * to the King, to be delivered after his death:

"May it please your majesty;

"Since this is not to be delivered 'till after my death, I hope your majesty will forgive the presumption of an attainted man's writing to you. My chief business is humbly to ask your pardon, for any thing that I have either said, or done, that might look like want of respect to your majesty, or duty to your government. In which, though I do to the last moment, acquit myself of all designs against your person, or of altering of the government, and protest I know of no design, now on foot, against either; yet I do not deny but I have heard many things, and said some things contrary to my duty; for which, as I have asked God's pardon, so I humbly beg your majesty's. And I take the liberty to add, that though I have met with hard measure, yet I forgive all concerned in it, from the highest to the lowest; and I pray God to bless both your person and government, and that the public peace, and the true Protestant religion may be preserved under you. And I crave leave to end my days with this sincere protestation, that my heart was ever devoted to that which I thought was your true interest; in which, if I was mistaken, I hope your displeasure against me will end with my life, and that no part of it shall fall on my wife and children; which is the last petition will ever be offered you from, May it please your majesty, your majesty's most faithful, most dutiful, and most obedient subject,

W. RUSSELL."

Newgate, *July* 19, 1683.

And also the following Letter to the King, written by lady R. Russell at the desire of Burnet:

"May it please your majesty:

"I find my husband's enemies are not appeased with his blood, but still continue to misrepresent him to your majesty. 'Tis a great addition to my sorrows, to hear your majesty is

* "This letter was written at the earnest solicitation of his lady; and as he was folding it up, having shewn it to Dr. Burnet, he said to him, This will be printed, and will be selling about the streets, as my submission, when I am led out to be hanged." Burnet's Journal.

* "The story of the last days of this excellent man's life fills the mind with such a mixture of tenderness and admiration, that I know not any scene in history that more powerfully excites our sympathy or goes more directly to the heart." Fox, Introductory Chapter.

about me, and gave me checks; and hath now for many years so influenced and possessed me that I feel the happy effects of it in this my extremity, in which I have been so wonderfully (I thank God) supported, that neither my imprisonment, nor the fear of death, have been able to discompose me in any degree; but, on the contrary, I have found the assurances of the love and mercy of God, in and through my blessed Redeemer, in whom only I trust; and I do not question, but that I am going to partake of that fulness of joy which is in his presence; the hope whereof does so wonderfully delight me; that I reckon this as the happiest time of my life, though others may look upon it as the saddest.

I have lived, and now die, of the reformed religion, a true and sincere Protestant, and in the communion of the church of England, though I could never yet comply with, or rise up to, all the heights of some people. I wish with all my soul, all our unhappy differences were removed, and that all sincere protestants would so far consider the danger of popery, as to lay aside their heats, and agree against the common enemy; and that the churchmen would be less severe, and the dissenters less scrupulous; for I think bitterness and persecution are at all times bad, but much more now.

For popery, I look on it as an idolatrous and bloody religion, and therefore thought myself bound, in my station, to do all I could against it. And by that I foresaw I should procure such great enemies to myself, and so powerful ones, that I have been now for some time expecting the worst. And, blessed be God, I fall by the ax, and not by the fiery trial. Yet, whatever apprehensions I had of popery, and of my own severe and heavy share I was like to have under it, when it should prevail, I never had a thought of doing any thing against it basely or inhumanly, but what could well consist with the christian religion, and the laws and liberties of this kingdom. And, I thank God, I have examined all my actings in that matter with so great care, that I can appeal to God Almighty, who knows my heart, that I went on sincerely, without being moved, either by passion, by-ends, or ill designs. I have always loved my country much more than my life, and never had any design of changing the government, which I value, and look upon as one of the best governments in the world, and would always have been ready to venture my life for the preserving of it, and would have suffered any extremity, rather than have consented to any design to take away the king's life: neither ever had man the impudence to propose so base and barbarous a thing to me. And I look upon it as a very unhappy and uneasy part of my present condition, that in my indictment there should be so much as mention of so vile a fact; though nothing in the least was said to prove any such matter; but the contrary by the lord Howard. Neither does any body, I am confident, believe the least of it. So that I need not, I think, say more.

For the king, I do sincerely pray for him, and wish well to him, and to the nation, that they may be happy in one another; that he may be, indeed, the defender of the faith: that the protestant religion, and the peace and safety of the kingdom, may be preserved, and flourish under his government; and that he in his person may be happy, both here and hereafter.

As for the share I had in the prosecution of the popish plot, I take God to witness, that I

prevailed upon to believe that the paper he delivered to the sheriff at his death, was not his own. I can truly say, and am ready in the solemnest manner to attest, that [during his imprisonment *] I often heard him discourse the chiefest matters contained in that paper, in the same expressions he therein uses, as some of those few relations that were admitted to him, can likewise averr. And sure 'tis an argument of no great force, that there is a phrase or two in it another uses, when nothing is more common than to take up such words as we like, or are accustomed to in our conversation. I beg leave, further to avow to your majesty, that al that is set downe, in the paper read to your majesty on Sunday night to be spoken in my presence, is exactly true; as I doubt not but the rest of the paper is, which was written at my request; and the author of it in al his conversation with my husband, that I was privy to, shewed himselfe a loyal subject to your majesty, a faithful frind to him and a most tender and conscientious minister to his soule. I do therefore humbly beg your majesty would be so charitable to beleve, that he who in al his life was observed to act with the greatest clearnesse and sincerity, would not at the point of death doe so disingenious and false a thing, as to deliver for his own what was not properly and expressly so. And if after the losse in such a manner of the best husband in the world, I were capable of any consolation, your majesty only could afford it, by having better thoughts of him; which, when I was so importunat to speak with your majesty, I thought I had som reason to beleve I should have inclined you to, not upon the credit of my word, but through the evidence of what I had to say. I hope I have writ nothing in this that will displease your majesty, if I have, I humbly beg you to consider it as coming from a woman amazed with grief, and that you wil pardon the daughter of a person, who served your majesty's father in the greatest extremityes [and your majesty in your greatest posts †] and one that is not conscious of having ever done any thing to offend you [before ‡]. I shal ever pray for your majesty's long life and happy reign, Who am, with al humility, may it please your majesty, &c."

* These words included in the brackets are crossed out.

† These words are likewise crossed out.

‡ This word was also crossed out.

proceeded in it in the sincerity of an heart, being then really convinced (as I am) there was a conspiracy against the king, the nation, and the protestant religion: And I likewise profess, that I never knew any thing, either directly or indirectly, of any practice with the witnesses, which I looked upon as so horrid a thing, that I could never have endured it. For, I thank God, falsehood and cruelty were never in my nature, but always the farthest from it imaginable. I did believe, and do still, that popery is breaking in upon this nation; and that those who advance it will stop at nothing, to carry on their design: I am heartily sorry, that so many protestants give their helping hand to it. But I hope God will preserve the protestant religion, and this nation: Though I am afraid it will fall under very great trials, and very sharp sufferings. And indeed the impiety and profaneness that abounds and appears so scandalously barefaced every-where, gives too just reason to fear the worst things which can befal a people. I pray God prevent it, and give those who have shewed concern for the public good, and who have appeared hearty for the true interest of the nation, and the protestant religion, grace to live so, that they may not cast a reproach on that which they endeavour to advance; which (God knows) hath often given me many sad thoughts. And I hope such of my friends as may think they are touched by this, will not take what I say in ill part, but will endeavour to amend their ways, and live suitably to the rules of the true reformed religion; which is the only thing that can administer true comfort at the latter end, and revive a man when he comes to die.

As for my present condition, I bless God, I have no repining in my heart at it. I know for my sins, I have deserved much worse at the hands of God: So that I chearfully submit to so small a punishment, as the being taken off a few years sooner, and the being made a spectacle to the world. I do freely forgive all the world, particularly those concerned in taking away my life: And I desire and conjure all my friends to think of no revenge, but to submit to the holy will of God, into whose hands I resign myself intirely.

But to look back a little; I cannot but give some touch about the Bill of Exclusion, and shew the reason of my appearing in that business; which in short is this: That I thought the nation was in such danger of popery, and that the expectation of a popish successor (as I have said in parliament) put the king's life likewise in such danger, that I saw no way so effectual to secure both as such a bill. As to the limitations which were proposed, if they were sincerely offered, and had passed into a law, the duke then would have been excluded from the power of a king, and the government quite altered, and little more than the name of a king left. So I could not see either sin or fault in the one, when all people were willing to admit of the other; but thought it better to have a king with his prerogative, and the nation easy and safe under him, than a king without it; which must have bred perpetual jealousies, and a continual struggle. All this I say, only to justify myself, and not to inflame others: Though I cannot but think my earnestness in that matter has had no small influence in my present sufferings. But I have now done with this world, and am going to a kingdom that cannot be moved.

And to the conspiring to seize the guards, which is the crime for which I am condemned, and which was made a constructive treason for taking away the king's life, to bring it within the statute of Edw. 3. I shall give this true and clear account: I never was at Mr. Sheppard's with that company but once, and there was no undertaking then of securing or seizing the guards, nor none appointed to view or examine them: Some discourse there was about the feasibleness of it; and several times, by accident, in general discourse elsewhere, I have heard it mentioned, as a thing might easily be done, but never consented to as fit to be done. And I remember particularly at my lord Shaftesbury's, there being some general discourse of this kind, I immediately flew out, and exclaimed against it, and asked, if the thing succeeded, what must be done next, but massacring the guards, and killing them in cold blood? Which I looked upon as so detestable a thing, and so like a popish practice, that I could not but abhor it. And at the same time the duke of Monmouth took me by the hand, and told me very kindly; my lord, I see you and I are of a temper; did you ever hear so horrid a thing? and I must needs do him that justice to declare, that I never observed in him but an abhorrence to all base things.

As to my going to Mr. Sheppard's, I went with an intention to taste sherry; for he had promised me to reserve for me the next very good piece he met with, when I went out of town; and if he recollects, he may remember I asked him about it, and he went and fetched a bottle; but when I tasted it, I said it was hot in the mouth; and desired that whenever he met with a choice piece, he would keep it for me. Which he promised. I enlarge the more upon this, because sir George Jefferies insinuated to the jury, as if I had made a story about going thither; but I never said that was the only reason: And I will now truly and plainly add the rest.

I was, the day before this meeting, come to town for two or three days, as I had done once or twice before; having a very near and dear relation lying in a very languishing and desperate condition; and the duke of Monmouth came to me, and told me, he was extremely glad I was come to town; for my lord Shaftsbury and some hot men would undo us all, if great care be not taken; and therefore for God's sake use your endeavours with your friends, to prevent any thing of this kind. He told me, there would be company at Mr. Sheppard's that night, and desired me to be at home

in the evening; and he would call me, which he did: And when I came into the room, I saw Mr. Rumsey by the chimney, although he swears he came in after; and there were things said by some with much more heat than judgment, which I did sufficiently disapprove, and yet for these things I stand condemned: But I thank God, my part was sincere and well meant. It is, I know, inferred from hence, and was pressed to me, that I was acquainted with these heats and ill designs, and did not discover them; but this is but misprision of treason at most. So I die innocent of the crime I stand condemned for, and I hope nobody will imagine, that so mean a thought could enter into me, as to go about to save myself by accusing others; the part that some have acted lately of that kind has not been such as to invite me to love life at such a rate.

As for the sentence of death passed upon me, I cannot but think it a very hard one; for nothing sworn against me (whether true or false, I will not now examine) but some discourses about making some stirs. And this is not levying war against the king, which is treason by the statute of Edward 3, and not the consulting and discoursing about it, which was all that was witnessed against me. But, by a strange fetch, the design of seizing the guards was construed a design of killing the king, and so I was in that cast.

And now I have truly and sincerely told what my part was in that, which cannot be more than a bare misprision; and yet I am condemned as guilty of a design of killing the king. I pray God lay not this to the charge, neither of the king's council, nor judges, nor sheriffs, nor jury: And for the witnesses, I pity them, and wish them well. I shall not reckon up the particulars wherein they did me wrong; I had rather their own consciences should do that, to which, and the mercies of God, I leave them. Only I still aver, that what I said of my not hearing colonel Rumsey deliver his message from my lord Shaftesbury, was true; for I always detested lying, though never so much to my advantage. And I hope none will be so unjust and uncharitable, as to think I would venture on it in these my last words, for which I am so soon to give an account to the great God, the searcher of hearts, and judge of all things.

From the time of chusing sheriffs I concluded the heat in that matter would produce something of this kind; and I am not much surprised to find it fall upon me. And I wish what is done to me may put a stop, and satiate some people's revenge, and that no more innocent blood may be shed; for I must and do still look upon mine as such, since I know I was guilty of no treason; and therefore I would not betray my innocence by flight, of which I do not (I thank God) yet repent, (though much pressed to it) how fatal soever it may have seemed to have proved to me; for I look upon my death in this manner (I thank God) with other eyes than the world does. I know I said but little at the trial, and I suppose it looks more like innocence than guilt. I was also advised not to confess matter of fact plainly, since that must certainly have brought me within the guilt of misprision. And being thus restrained from dealing frankly and openly, I chose rather to say little, than to depart from ingenuity, that by the grace of God I had carried along with me in the former parts of my life, so could easier be silent, and leave the whole matter to the conscience of the jury, than to make the last and solemnest parts of my life so different from the course of it, as the using little tricks and evasions must have been. Nor did I ever pretend to a great readiness in speaking: I wish those gentlemen of the law who have it, would make more conscience in the use of it, and not run men down by strains and fetches, impose on easy and willing juries, to the ruin of innocent men: For to kill by forms and subtilties of law, is the worst sort of murder: But I wish the rage of hot men, and the partialities of juries, may be stopt with my blood, which I would offer up with so much the more joy, if I thought I should be the last were to suffer in such a way.

Since my Sentence, I have had few thoughts but preparatory ones for death; yet the importunity of my friends, and particularly of the best and dearest wife in the world, prevailed with me to sign Petitions, and make addresses for my life:* To which I was very averse: For (I thank God) though in all respects I have lived one of the happiest and contentedest men in the world, (for now near 14 years) yet I am

* Of this Paper, the following gross misrepresentation is given in "Sprat's History of the Rye House Plot." [See some account of it at p. 362. of this volume.] "As to the whole matter of it, time, the best discoverer and light of truth, has since shewn it to be full of enormous falshoods, and for the manner of its composure it was such as rather became the subtilty, artifice, and equivocation of some crafty hypocritical confessor or presbyterian casuist, than the noble plainness and simplicity of a gentleman, especially of one who in this very paper, so much boasts of the sincerity and candour of his whole life, and of his perpetual hatred of tricks and evasions." In the same work lord Russell is styled, 'a person carried 'away beyond his duty into this traiterous 'enterprize by a vain air of popularity, and 'a wild suspicion of losing a great estate, by 'an imaginary return of popery.' This last uncorroborated imputation, I apprehend to be a most base and groundless slander of artful unprincipled, and implacable malignity. Sir William Temple (whose testimony in favour of lord Russell, must be admitted to be *omni exceptione majus*) calls him "a person in general repute of an honest worthy gentleman, without tricks or private ambition, and who was known to venture as great a stake perhaps as any subject of England."

so willing to leave all, that it was not without difficulty that I did any thing for the saving my life that was begging. But I was willing to let my friends see what power they had over me, and that I was not obstinate nor sullen, but would do any thing that an honest man could do for their satisfaction, which was the only motive that swayed, or had any weight with me.

And now, to sum up all, as I never had any design against the king's life, or the life of any man whatsoever; so I never was in any contrivance of altering the government. What the heats, wickednesses, passions, and vanities of other men have occasioned, I ought not to be answerable for; nor could I repress them, though I now suffer for them. But the will of the Lord be done, into whose hands I commend my spirit; and trust that thou, O merciful Father! hast forgiven me all my transgressions, the sins of my youth, and all the errors of my past life, and that thou wilt not lay my secret sins and ignorances to my charge; but wilt graciously support me, during that small part of my life now before me, and assist me in my last moments, and not leave me then to be disordered by fear, or any other temptation; but make the light of thy countenance to shine upon me; for thou art my sun and my shield: And as thou supportest me by thy grace, so I hope thou wilt hereafter crown me with glory, and receive me into the fellowship of angels and saints, in that blessed inheritance, purchased for me by my most merciful Redeemer, who is, I trust, at thy right-hand, preparing a place for me, and is ready to receive me; into whose hands I commend my spirit.

(Signed) WILLIAM RUSSELL.

The Attainder was afterwards reversed by the following act of parliament passed, 1 William and Mary:

"An ACT for annulling and making void the Attainder of WILLIAM RUSSELL, esq. commonly called Lord RUSSELL."

"Whereas William Russell, esq. commonly called lord Russell, eldest son of the right honourable William earl of Bedford, in the month of July, in the five-and-thirtieth year of the reign of our late sovereign lord king Charles the second, at a sessions of gaol delivery, holden at the Old Bailey, London, was, by undue and illegal return of jurors, having been refused his lawful challenge to the said jurors, for want of freehold, and by partial and unjust constructions of law, wrongfully convicted, attainted, and executed for high treason: may it therefore please your most excellent majesties at the humble petition of the said earl of Bedford, and the right honourable the lady Rachell Russell, relict of the said lord Russell, that it be declared and enacted by the authority of this present parliament; and Be it enacted by the king and queen's most excellent majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by authority of the same, That the said conviction, judgment, and attainder of the said William Russell, commonly called lord Russell, be, and are hereby repealed, reversed, made and declared null and void, to all intents, constructions, and purposes whatsoever, as if no such conviction, judgment, or attainder, had ever been had, or made: and that no corruption of blood, or other penalty, or forfeiture of honours, dignities, lands, hereditaments, goods, or chattels, be by the said conviction or attainder incurred; any law, usage, or custom to the contrary notwithstanding. And to the end that right be done to the memory of the deceased lord Russell aforesaid, Be it further enacted, that all records and proceedings relating to the said attainder, be wholly cancelled, and taken off the file, or otherwise defaced and obliterated, to the intent the same may not be visible in after ages: and that at the next sessions of gaol delivery, to be holden for the city of London, the said records and proceedings shall be brought into the Court, and then, and there taken off from the file, and cancelled.

WILLIAM COWPER, Cl. Parl.

The CASE of WILLIAM Lord RUSSELL, tried for High Treason, July 13, A. D. 1683.

THE Indictment is very long: but for substance it is, 'for conspiring the death of 'the king, and intending to levy war, and to 'that end to seize the guards:' For the Indictment concludes, "And the guards for the 'preservation of the person of our said lord 'the king to seize and destroy, against the 'duty of his allegiance, against the peace, '&c. and also against the form of the statutes,' &c.

Those that gave their evidence against the prisoner, were Rumsey, Sheppard, and my lord Howard.

The overt act of conspiring the death of 'the king,' is 'consulting to levy war, and to 'that intent to seize the guards:' so that the design to seize the guards, is the overt act assigned of conspiring the king's death.

The quære then is, Whether my lord Russell was guilty of high treason within the statute of 25 Ed. 3, (for upon that statute he was tried) and I conceive he was not; and therefore his attainder ought to be reversed.

But before I speak to the matter of law, on which I shall chiefly insist, I must desire you to observe some inconsistencies and contradictions in the evidence.

First, That none of these persons had their

pardons; which was otherwise in the Popish Plot: for no person gave evidence before he had his pardon. Therefore, being unpardoned, though they might be legal, yet not credible witnesses: both which are required by the statute. For whilst the fear of death attends a man, he is thinking how he may save his life, rather than to speak nothing but the truth, and he that is so base to purchase his own life at the price of another man's, will be sure not to speak less than the truth.

Next, I observe how the king's council, by the questions they put to the witnesses, did lead, if not, in a manner, dictate to them what to say.

And I take notice, that my lord Howard, who must be supposed to have a full knowledge of the Plot, yet never says a word of their intent to seize the guards, which was the principal thing in the evidence of Rumsey and Sheppard: for, had there been any such intent, it is strange, that my lord Howard, who had brought in so many other things by head and shoulders, should forget so remarkable a piece of evidence, and so home as that.

This is only in general: but, in particular, do but observe Rumsey's evidence.

He says, he was not there above a quarter of an hour; and whilst he was there, two things were debated and resolved, and a third thing discoursed. Surely they were things which they did not much value; or else they were men of wonderful dispatch, that could receive and debate the message which he brought from my lord Shaftesbury, then debate the matter of the guards, and come to a resolution in both; and afterwards discourse about the declaration; and all this in a quarter of an hour, or else Rumsey is perjured.

In the next place, it is very remarkable, where he says, 'He was not certain whether 'he was at another meeting, or else heard Mr 'Throgmorton make a report of another meeting to my lord Shaftesbury.' And again he says, that 'he was not certain, whether he did 'hear something about a declaration, when he 'was at that meeting; or that Mr. Ferguson 'did report it to my lord Shaftesbury, that 'they had debated it.' To say no more of it, it is very strange, that a man cannot be certain, whether he knows a thing of his own knowledge, or by hearsay: and if in so plain matters as those he spoke on uncertain knowledge, it is not unreasonable to suppose, that he might as easily be mistaken in the rest of his evidence.

Then as to Sheppard; he first swears, point blank, that my lord Russell was at two meetings at his house. But, being pressed by my lord Russell, he can remember but one; and when that was, he could not recollect himself, though not above eight or nine months before, as he confesses. It is strange that a man should be so much in a wood about so remarkable a thing. But surely it must be hard upon the prisoner, that the time could not be fixed: for if witnesses may give evidence at that rate, it will be much ado for any prisoner to make his defence.

As to my lord Howard; his evidence is so notorious, that I need say nothing of it, but refer you to the printed trial for your satisfaction: only I will take notice of one thing which he says, to reconcile what he said to my lord of Bedford, my lord Anglesey being present, and what he afterward swore against my lord Russell at his trial. Says he, 'Your 'lordship knows, that every man that was 'committed, was committed for a design of 'murdering the king. Now I laid hold on 'that part: for I was to carry my knife 'close between the paring and the apple; and 'I did say, that if I were an enemy to my 'lord Russell, and to the duke of Monmouth, 'and were called to be a witness, I must have 'declared, in the presence of God and man, 'that I did not believe either of them had any 'design to murder the king.'

As to the first, what he said to my lord of Bedford, was as to the Plot in general; and if to any particular part of it, it must be as to the insurrection; for there was to be my lord Russell's province.

Secondly, My lord Howard knew, that all that were committed, their commitments run as well 'for levying of war, as for conspiring 'the king's death.' So that his lordship must find out something that will reconcile himself to himself, better than his 'knife betwixt the 'apple and the paring;' or else it will follow, that he solemnly said one thing, and swore another

I have but only touched these things; because I hasten on to the matter of law. For though it were without contradiction, that every thing sworn against my lord Russell were true, yet it did not amount to high treason.

First, Because a 'conspiracy to levy war' is not an 'overt act of imagining the death of 'the king.'

In arguing of this, I will not meddle at all with the original of allegiance, nor the true nature of it; neither make any discourse, that heretofore it was a less offence to plot against the king's life, than against the government; but I will leave those sore places, and endeavour to prove my point, by considering these five things:

First, Whether any Court, the parliament excepted, can try a man upon an indictment for high treason, that is grounded upon the common law.

Secondly, To what end and intent the statute of 25 Edw. 3, cap. 2, was enacted.

Thirdly, Whether [conspiring the death of the king,] and [levying of war,] are distinct species of treason.

Fourthly, whether every law is not to be construed, most strictly to restrain the mischief against which it was enacted.

Fifthly, what is the true meaning and signification of being 'provably attainted by overt 'deed.'

1. As to the first, it seems to be out of doubt: at this day there can be no such thing as an indictment at common law for high treason; though for other things there may: because there is no precedent of it, since the statute of 25 Edw. 3. For nothing is more common than for every prisoner that is arraigned for high treason, to demand upon what statute he is indicted, and the Court, or king's counsel, to tell him the particular statute. Besides, every impeachment before the Lords in parliament, is grounded upon some statute: and if so, *à fortiori*, no inferior Court can try a prisoner upon an indictment for high treason, grounded upon the common law. For the law, which greatly delights in certainty, especially in case of life, will not allow of an indictment at common law: because no issue can be joined upon it, by reason of the uncertainty.

As to the second, viz. To what end or intent the statute of 25 Edw. 3, was made? I thus answer:

Edward 3 was a victorious captain, and potent prince, whereby he became very renowned; but that which made his name the greater and his fame the more lasting, was those good and wholesome laws which were enacted in his time; by which he restored and beautified the government, that had been defaced, and almost destroyed, by the proceedings during his father's irregular reign And of all the oppressions under which the nation groaned, there was none that lay heavier upon the people, than the extravagant licence which the judges took in the interpretation of treason. And this appears by the particular and universal joy expressed by the whole land, at the making of the said statute; for though he called parliaments very frequently, and none of them proved abortive of good laws, yet that parliament which was held in the 25th year, did more than any of the rest: and of all the beneficial laws that were then enacted, the second statute, whereby treason was reduced to certainty, gave the people the greatest cause to lift up their heart and voice in thankfulness to God and the king; because the jaws of their devouring monster were broken, which had torn in pieces so many families, and threatened destruction to the rest. So that this statute was made to restrain and limit judges from calling any thing treason, that might be so by inference or implication, and only to judge upon that which is literally so within that statute. For it is there provided, that if any such like treasons shall come before any of the justices, that they must stay, without going to judgment, till the cause be declared before the king and his parliament. And all subsequent statutes of treason are all as so many confirmations of this statute: for they had been needless if the judges could have called any thing treason, but what is literally such within that statute. And the statute itself had been made to no purpose, if it had not strictly restrained the judges. And my lord chancellor Nottingham was of opinion, that even the lords in parliament could not proceed upon an indictment for High Treason, unless the fact therein alledged were first declared by some statute to be treason.

3. As to the third thing, it never was, nor will be denied, That compassing the death of the king, and levying of war, are two distinct species of treason, unless all treasons are of the same kind. But if there are several sorts of treasons, then it will follow, that these are also distinct; because in every statute of treason, which mentions conspiring the death of the king, and levying of war, they are named distinctly. Besides, they are different in the manner of proof: for that which is necessary to prove the one, does in no sort prove the other. And furthermore, the one may be effected, and the other never so much as intended or designed. As for example, the king may be murdered, and no war levied nor intended. And moreover, in the one case it is treason, as well to intend as to execute it, without tacking it to any other thing: but it is not so in the other; for it is in itself, and abstractly from every thing else, treason, as well to compass the king's death as to kill him. But an intention to levy war, and doing all things in order to it, is not treason, unless the war be levied, except by implication or inference. And I am persuaded, that the want of observing, that these are distinct species of treason, has been the occasion of that mistake of calling a conspiracy to levy war, an overt act of conspiring the king's death.

4. As to the fourth, no doubt, every statute is to be construed most strictly to restrain the mischiefs against which it was enacted. For the uninterrupted course of all judgments and resolutions hath been accordingly; and nothing can more directly thwart common sense, than to make it otherwise. And therefore, if the statute be absolute, the more forcibly it is construed to restrain that mischief, the more truly is the intent of that statute pursued. For how shall any evil be suppressed, if the remedy must be applied but by halves? The law then would be rather a mockery, than a means to redress the evil, if it shall not be taken most strongly against it. Either it is, or it is not, a restraint of the grievance complained of. If it is not, why was it made? If it is, why must it not be understood in that sense, whereby the mischief or evil may be more effectually suppressed and prevented?

5. As to the fifth, the answer will be best understood by considering, first, the signification of the two words apart, viz. Provably and Overt.

Provably, signifies to prove, or make good by evidence, argument, reason, or testimony.

Overt has all these significations, open, clear, plain, apparent, manifest, notorious, evident, public, known, undoubted, certain, perspicuous.

These then being the significations of these words, what can follow more naturally, than that to be provably attainted by overt deed,

is that the fact must not only be direct, apparent, and notorious to the point, but it must also be proved clearly, evidently, plainly, and perspicuously, void of all doubt or obscurity? And those two words being taken together, do the better expound each other, and seem to be choice words, and words of art culled out by the penners of that statute, as the most expressive, to exclude all implications or inference, that might be made in case of treason.

These things being premised, which are as easily proved as alledged, there will remain very little, besides shifts and evasions, to prove that a conspiracy to levy war is an overt act of compassing the king's death.

The things that are chiefly and commonly urged to maintain that opinion, are these two:

First, It would be of dangerous consequence if a conspiracy to levy war, may not be interpreted an overt act of compassing the king's death; because there is no means left to prevent it, and the mischief attending it, when the war is levied.

Secondly, if a war be levied, the death of the king must needs be intended, and will certainly ensue, if the rebels prevail.

In answer to these it may be replied, That the one of them is but a bare objection, and the other no substantial argument; because it begs the question, which is surely a feeble way of arguing.

But I will give a more particular answer to them. And it will be more proper to begin with the second; because in speaking to it, the other will in great measure receive an answer.

Now as to the second, it may be observed, that the death of the king is made so certain and necessary a consequence of levying a war, that by reason of that certainty a conspiracy to levy war is an overt act of compassing the king's death. If therefore the certainty will not hold, but that many cases may be put, and instances produced, wherein the king's death is not intended, nor did ensue upon the prevailing of the party, then is the whole weight and strength of the argument of no effect.

The Huguenots in France have heretofore assembled in arms; and though they repeated it several times, yet on which of those occasions does it appear, either by the cause of their coming together in that manner, or by the effect of it, that it was levelled at the king's life? No, the cause of their rising in arms was for the asserting of their religion and just rights. For as soon as their reasonable demands were satisfied, they laid down their arms more willingly than they took them up; neither did they attempt any thing against the king's life, when he was in their power; but after they were answered in those things to which they had right, both by the laws of nature and the government, immediately they returned home in peace, and upon all other occasions proved the most firm and loyallest subjects of all other in that king's dominions, and so this present king of France must testify for them, if he will do them right.

If the Protestants in France should at this time rise in arms, upon so just a provocation as now they have, it would be senseless to suppose, that they levied the war with a principal design to murder the king, and not for the defence of themselves and just rights, which are so inhumanly, and against all law and justice, at this time, invaded and ravished from them. Story is full of like cases and instances to this. But to speak more particularly to England: what was the baron's war? the answer to which must be, that they took up arms to assert their rights and liberties, which the king, contrary to his oath, with-held from them: and though it lasted near 40 years, yet the king's death was never intended, nor his life in any danger: for as soon as their just demands were answered, they put up their swords, and every man returned home, and prayed for the life of the king. And out of English story, what one instance can be produced, where the cause of war was declared to be against the king's life; or if the party prevailed, the king was to be put to death by their general consent and approbation? for though it be true, that there are some instances, where they have been murdered after the war; yet it is also as true, that it was by private assassination, and not by the consent and privity of those who levied the war; for all those who were concerned in the murder, were afterwards condemned and executed for it, as traitors: as in the case of Edw. 2. and Ric. 2.

As for that of Charles the First, which is so much pressed and urged, though the cause of war had been expressly against his life; yet as one swallow does not make a summer, so neither does one precedent prove the point. But besides, in that case of Charles the First, to infer from thence, that the king's death is principally intended by levying of war, is altogether as weak an argument, as to say, because a thing falls out by accident, therefore that very thing was the principal design and aim of the whole action. For in that war, those who first took up arms, did it to oppose the king's arbitrary practices; and though he was afterwards put to death, yet it was altogether against their consent or desire; and most of the army was against it, and would have prevented it, but that they were at that time so broken into factions and parties, that they durst not trust one another. For after that tragedy was acted, those who first took up arms, immediately upon it laid them down, and were afterwards the chief instruments of the late king's restoration.

But if the king's death be the principal thing intended by levying of war, to what purpose is the war levied? cannot the king be taken off more easily by poison, or a private assassination? To the effecting of which, opportunity cannot be wanting; and so with more certainty the end is obtained, and a less hazard run in the execution, than could be done by a war; except those who levy the war to kill the king, are not content with the murder of him, unless

they cut the throats of all those that would defend him. Indeed to do it by an open war, rather than by poison, or a private assassination, is the more generous way; for they give him fair warning to look to himself, like a noble enemy, that scorns to kill his adversary basely. It is indeed to go round about, for the nearest way. Therefore a war, when levied, must be for some other intent, than to take away the king's life: since Englishmen, if they enjoy their properties, no prince is so great and happy in the heads, hearts, hands and purses of his subjects as an English king.

But yet, allowing that upon every war levied the death of the king would certainly ensue if the rebels prevail; yet this question does naturally arise, viz. Where is that statute which does in express terms say, That a conspiracy to levy war is treason? for if it be not so expressly and literally within some statute, then it is a constructive treason, and consequently no such treason, as upon which the judges may proceed, if the statute of 25 Ed. 3 was made to any purpose: for that the statute restrains all constructive treason, or none. But if the judges may, in any one case, make a constructive treason, they may do it in all; and so we are left in the same uncertainty about treason, as we were before that Stat. 25 Edw. 3 was made.

If the judges might judge upon constructive treason, yet it seems to be a far-fetched construction to make conspiracy to levy war, an overt act of compassing the king's death: For this is not to be probably attainted by overt deed.

First, Because the conspiring the death of the king, and levying of war, are two distinct species of treason; and therefore, it would be very unnatural, and too much forced, to join these together; and, as it were, to make them one and the same thing, that are so different and divers, not only in the manner and matter of proof, but also in themselves.

For then, secondly, a conspiracy to commit any other treason, may also be called an overt act of imagining the king's death: which was never yet pretended.

Thirdly, A conspiring of any one treason may then be an overt act of any other treason.

Fourthly, Any other criminal act may then as well be called an overt act of conspiring the king's death.

Fifthly, This is to make a conspiracy to levy war, treason in itself. For there is very little difference between calling a thing treason in itself; and to make it an overt act of some treason within the statute.

Sixthly, Because a conspiracy to levy war, was not treason at common law.

Seventhly, the Statutes of 23 Eliz. and the 1 and 3 Jac. 4. which make it high treason to reconcile any to the church or see of Rome: or to be so reconciled, were enacted to no purpose, if a conspiracy to levy war is an overt act of the compassing the king's death. For what can tend more plainly and directly to levy war, than to persuade the people to renounce their allegiance to the king, and to promise faith and obedience to some other power? so that these, and all other statutes concerning treason, which have been made since the statute of 25 Edw. 3. are as so many confirmations of it; and consequently prove, that the judges can call nothing treason, but what is literally such, within that, or some other statute.

Eighthly, My lord Coke says, that conspiracy to levy war is not treason, unless the war is levied *in facto*. And questionless his opinion is very good law; because in many cases it is not treason to levy war; *et a fortiori*, a conspiracy cannot. For look into the statute of 1 Q. Mary, and there you will find several things provided against, which are plainly and directly a levying of war, and yet they are declared to be but felony.

But it may be objected, That by Stat. 3 and 4 Edw. 6. the offences mentioned in 1 queen Mary were made treason. It is very true; yet it does not alter the case, but rather proves the point. For, first, they being made treason by statute, proves that it was not so in itself. Secondly, because in the two next succeeding reigns it is declared to be but felony. For the statute of queen Mary is confirmed by 1 Eliz. 16. And thereupon the argument is the stronger; because these two queens were of different religions. Thirdly, because when a thing is declared an offence by act of parliament, and is afterwards made a less offence by statute, it proves that it was not so great in itself; but that the necessary circumstances of time and affairs required it should then be such.

But the case is yet stronger, because in some cases it may be but a trespass to levy war; as it was in the case of my lord Northumberland, 5 Hen. 4. He did actually raise forces, and such as were taken to be a levying of war: for which he was questioned before the lords, and tried for high treason. But though the lords did find the fact, yet they adjudged it but a trespass; because the powers raised were not against the king, but against some subjects. This precedent seems to carry great weight in it: First, because it is a judgment given in the highest court of judicature: Secondly, because it was given so soon after the making the statute of 25 Edw. 3, who must be supposed to understand the intent and meaning of that statute full as well as succeeding ages.

The case of those who aided sir John Oldcastle might also be urged; who were acquitted, because in their defence it did appear, that by reason of fear, and to save themselves, they were constrained to what they did. Which is ground for another argument, if there were occasion; because it proves that the maxim in law, 'Actus non sit reus, nisi mens sit rea,' holds in case of treason, as well as in all other [cas]es. But I think there is no need of it: for if war may be levied, which is neither treason nor felony, it must be a very unnatural construction of a conspiracy to levy war, to make [i]t an overt act of compassing the king's death.

Thus the second thing objected has received a full answer, and likewise the first, in a great measure. Yet I will add a few words, that no doubt may remain.

If the consequence on all hands be duly considered, the danger will be found to lie on the other hand: yet be it as great as can be pretended; it must be remembered, that the law has settled the point; and so it must stand, till by the same authority it be altered. For the rule in law is not to be forgotten, 'Nemo Legibus Sapientior.' It is pretended, that out of a tender regard which the law, and all subjects, ought to have for the king's life, a conspiracy to levy war is taken to be an overt-act of compassing the king's death: to this it may be answered by way of question, how comes it about, that this age should have a greater care of the king's life than our forefathers had? Can it be imagined, that they did not understand the nature of the government as well as we do? nor did know of what consequence to the public the preservation of the king's life is? can it be thought, that they did not impartially weigh and consider the consequence on all hands? yet, however, let the defects be never so many, seeing it is settled by law, it cannot be altered but by the same power: For if it may, then let the consequences be seriously debated, of leaving it in the breast of the judges to rectify the mistakes, or defects, be they fictitious or real. For then, when a turn is to be served, the law will be sure to be defective; and so in effect they shall *Legem dare*. Treason will then be reduced to a certainty; that is, if the judges please; otherwise not: There will be then no need of parliaments: for the judges shall both declare and make law. What will all our laws signify, though made and penned with all the wisdom and caution that a parliament is capable of, if the judges are not tied up and bound by those laws? it renders parliaments useless, and sets the judges above that great council. They can undo what the other has done. The parliament chains up some unruly evil, and the judges let it loose again. But besides, where is this dangerous consequence, as is objected? indeed there had been some weight in the objection, had a conspiracy to levy war been wholly unpunishable. But the law has provided a punishment commensurate to the offence; which though it does not extend to life, yet is sufficient to deter men from the commission of it. Yet if a conspiracy to levy war is to be punished in as high a degree as a war when levied, this would be to punish thoughts as highly as deed; which if it be just, yet is *summum jus*.

Mr. Solicitor Finch twittered out two or three imperfect precedents, viz. that of my lord Cobham, Dr. Story, and Plunket. These, as they are not altogether to the purpose, so they are so very modern, that no great regard is to be had to them; and they rather prove the ignorance or boldness of those judges, than that a conspiracy to levy war is an overt-act of compassing the king's death: because the statute of 25 Edw. 3, has provided, That if any such-like treasons come before the justices, they must tarry without going to judgment, till the cause be shewed before the king and his parliament: and therefore for those judges to take upon them to judge upon that which was doubtful, and not literally nor expressly a treason, was to assume the part which the king and parliament had reserved to themselves. And therefore, upon what has been said, this conclusion will follow, that no man can (before the judges) be convicted of treason, unless the fact be expressly and literally treason within some statute, and he be thereof provably attainted by some overt-deed; and consequently a conspiracy to levy war is not an overt-act of compassing the king's death, but a trespass, or high-misdemeanor: and therefore, the judgment against my lord Russell was manifestly unjust; and so, of course, it ought to be reversed.

If a conspiracy to levy war were treason of itself, or an overt act of imagining the king's death, yet my lord Russell was not guilty of high treason within the Stat. of 25 Edw. 3, because the overt-act assigned against him, was his being of a counsel of six to manage an insurrection, and in order to it to seize the guards, for had he actually seized the guards, yet it could not be treason within the Statute 25 Edw, 3.

First, Because the guards are not settled by act of parliament, and consequently they have no legal force: For the law has pronounced, that all standing force other than the militia, is in *terrorem populi* illegal, and a grievance; and the reason of it is clear; because the law does never protect or countenance any thing that is, or may be burdensome, or that is useless; And it is so evident that in the pensionary parliament, this vote passed in the House of Commons, *nemine contradicente*: That all standing force other than the militia is illegal, and a grievance: and though they have the king's commission, as may be objected; yet his commission cannot make that lawful that is illegal, no more than he can tolerate a riot, or pardon a common nuisance: for if several persons were tried for a riot, and it manifestly appear upon the evidence to be such, would their producing the king's commission keep them out of the compass of the law? Or should those who did assemble together to suppress them, be guilty of levying war, because those other persons had the king's commission? Therefore if my lord Russell had assembled a force sufficient to seize the guards, the most that could have been made of it, was to bring it within the statute of the 1 Qu. Mary 12, which makes it but felony. And this being duly compared with the precedents urged by Mr. Attorney, and Mr. Solicitor, will retort them strongly upon themselves.

Secondly, It could not be treason within the statute 25 Ed. 3, because at the time of making that statute, there was no such thing as the guards: For the first thing of that sort was

the band of pensioners which Hen. 7, set up in imitation of what he had seen, and learned in France: for in Ed. the 3d's time, though he was the third that without interruption had succeeded to the crown; yet succession had not then obtained so sacred a reputation, as not to stand in need of the people to uphold them in the throne; and therefore kings were then too wise to do any thing that would be so apparent a distrusting of the people, as to call in guards to their aid. And besides the constant wars, either with France or Scotland, made them stand continually in need of the people's supplies; and therefore they would be sure cautiously to avoid all things, that might give the nation occasion of offence: and nothing could be more distasteful to the people than to be nosed by a standing force, which the law had adjudged to be illegal and a grievance. And therefore, as there were no such things as guards at the making of that statute 25 Ed. 3, so that statute cannot be supposed to take notice of them.

Thirdly, If the guards were established by act of parliament, yet if they were so established since the 25 of Ed. 3, my lord Russell was not within that statute, because it provided for nothing but what was lawfully in being at the time when it was made. So that if it were an offence to seize the guards, my lord Russell ought to have been indicted upon that statute which did so make it an offence. For if a prisoner is indicted upon a wrong statute, and the evidence proves nothing of the statute on which he is indicted, but comes very home, and point blank to the statute on which he ought to have been indicted, he may plead specially to it, and the court must direct the jury to bring him in Not Guilty.

Fourthly, My lord Russell was not within the statute of 25 Ed. 3, because the indictment concluded falsly; and more falsly than any indictment that I ever saw or heard of. For it says, [And the guards for the preservation of the person of our said lord the king to seize and destroy, against the duty of his allegiance, against the peace, and also against the form of the statutes.] This conclusion contains in it four parts, and none of them is true. First, That the guards are for preservation of the king's person. It will be an easier matter to find a world in the moon than that the law has made the guards a lawful force, or any statute that has established any force, particularly for the guard of the king's person. And though the law had established any such force; yet it was not done by the 25 Ed. 3, and therefore in this the indictment concluded falsly.

The second thing is this, that to seize and destroy the guards was against the duty of his allegiance. To speak fully to the nature of allegiance would require a long discourse. But a few words will lay this upon its back. It cannot be denied that nature and the law did nothing in vain: And if so, can it be imagined that the law would establish such a thing as the guards, which had made so much a better provision for the preservation of the king's person, even the duty and interest of every one of his subjects? In the next place, subjection and protection are conertible terms, and therefore if the subjects do not receive protection by the guards, it is not against their allegiance to seize and destroy them: Whereas to seize the militia is against their allegiance; because they receive protection by them. Besides no man becomes an offender, till the law has been promulged so as that no man can reasonably be supposed to be ignorant of it. Now then, though the king by his commission might make the guards such a lawful force; yet *non constat* that they are so commissioned by him. For it has not been published in that due manner and form, as that the nation can regularly take notice of it. And besides, there is no record entered, or remaining of it in any court, or any other place, whereby the people may come to a certain knowledge of it, which is also a forceable argument against the legality of such a commission. So that though in other cases *Ignorantia Juris* is not allowed; yet in this case it is a very good plea, that it was not against my lord Russell's allegiance to seize the guards, though the king's commission did make them a lawful force.

The third thing is, that it was against the peace, which is an untrue conclusion. For it is not against the peace to seize any force that is not countenanced by law. And a needle may sooner be found in a cart-load of hay, than any statute that hath established the guards. And if the king's commission can make a force a lawful force, then it is hard to say, whether the rebellion in Ireland did not act upon sufficient authority, since no clear answer has yet been made to the commission under the broad seal, which the rebels produced to justify their proceedings. In the next place, every treason is against the peace. But to conclude, because it is against the peace, therefore it is treason, is neither law nor reason. For every offence is against the peace; but every offence is not treason. Furthermore, the king's lawful commission is not to be opposed in any case; and the indictment upon it will run, that it is against the king's crown and dignity, and against the peace. Therefore to conclude, that it is treason, is a *non sequitur*: For it is not treason in many cases, to seize and destroy those that act by the king's lawful commission.

The fourth thing is that it was against the form of the statutes. The statutes thus mentioned must be those statutes, or at least must comprehend some statute that settles the guards for the preservation of the king's person: For the seizing of the guards is the Overt Act assigned of compassing the king's death. Now if there be no such statute, then is this part of the conclusion of the indictment also false. And consequently the judgment against my lord Russell ought to be reversed.

An ANTIDOTE AGAINST POISON: Composed of some Remarks upon the PAPER printed by the Direction of the Lady Russell, and mentioned to have been delivered by the Lord Russell to the Sheriffs at the Place of his Execution.* By Sir BARTHOLOMEW SHOWER.

THE publishing of this Paper, as the last speech of a dying man, cannot but surprize all persons who were present at the trial of the lord Russell, to read such reflections upon the judges, the king's counsel, the sheriffs, and the jury; the fact so untruly represented, and the offenders innocence so strongly asserted, when they can all attest to the fairness of his trial, the respectful treating of him by the king's counsel, as far as was consistent with their duty, without any strains upon the evidence to the favourable demeanor of the court towards him, not in the least aggravating the crime beyond the evidence, and to the fulness of the evidence upon the proofs produced: And therefore those who heard the evidence must acknowledge, that that paper is so far from containing the whole truth of the lord Russell's case, that what of fact therein inserted, is wholly disguised, and untruly, and unfaithfully set down. Neither doth the lord Russell, in his speech to the sheriffs, aver all contained in that paper to be true, nor the paper to contain the whole truth of his case; only saith, he had set down in that paper all that he thought fit to leave behind him. No doubt, he might as well have said, all that his faithful confessor advised him to leave behind him.

For whosoever strictly peruseth the paper, will not find the ingenuity, sincerity, or plain style of a dying gentleman, but may discover the peculiar dialect of an artist, accustomed to shadow truth with doubtful and ambiguous expressions; and the paper artificially contrived and designed to gratify a party by a colourable asserting the innocency of the criminal condemned by the law for High-treason, and laying a malicious imputation upon the government, for an unjust prosecution of an innocent person to death.

Whether the paper doth truly state the crime, upon the fact proved, for which the lord Russell was condemned; and whether it contain any plain denial of that fact; will best appear by truly stating the crime charged upon him by the indictment, and the fact proved upon him at his trial.

The lord Russell, with others, are charged by the indictment with High treason, for conspiring, compassing, and imagining the death and destruction of the king, and raising of a rebellion within the kingdom.

And the Overt-Acts wherewith they are charged, are their meeting together, consulting and agreeing to raise an insurrection and rebellion, and to seize upon the king's guards.

At the trial colonel Rumsey did swear, that there was a general rising intended in October and November last, and that he was engaged therein: and that the earl of Shaftesbury, who was likewise engaged therein, in November last acquainted him, that the duke of Monmouth, the lord Gray, lord Russell, sir Thomas Armstrong, and Mr. Ferguson, were to meet at Mr. Shepherd's house in Abchurch-lane, and se him thither with a message to them; that accordingly he went thither, and found the lord Russell, and the rest there, and delivered to them the message from the earl of Shaftsbury; which was, that it was high time to come to some resolution about the rising: That answer was returned, that Mr. Trenchard had assured them, that, in four hours time, one thousand foot, and two or three hundred horse should be ready at Taunton. But now Mr. Trenchard required two or three days notice of the rising and therefore they could not go on at present: and that my lord Shaftesbury must be contented.

He said the answer was pronounced by Mr. Ferguson, and the lord Gray spoke to the same purpose: And being interrogated, whether the lord Russell were so near as to hear the message; he said he was so near, and could not but hear it. And being asked by the lord Russell, whether he consented to the answer, he declared upon his oath, that the lord Russell did consent; and that they then treated and consulted of the general rising: And both colonel Rumsey and Mr. Shepherd did swear, that the lord Russell and the rest did consult at Mr. Shepherd's about seizing of the king's guards. And having at a former meeting appointed some of their number, viz. the duke of Monmouth, lord Gray, and sir Thomas Armstrong, to view in what posture the guards were, they made report to the rest there, that they found them very remiss in their duties, and might be easily seized. Mr. Shepherd swore, that their meeting at his house was not casual but appointed by themselves; and that they came late in the evening; and that my lord Russell mentioned not any private business to him; neither had he then any private business with the lord Russell. But the lord

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* "It is observable, that in the State-Trials, vol. 3, pag. 673, is inserted sir Robert Atkins's Defence of the late lord Russell's innocency: By way of Answer or Confutation of a Libellous Pamphlet, entituled, "An Antidote against Poison." But the Antidote itself (wilfully I suppose) omitted." (Note to the first edit. of vol. 8 of the State Trials, in the Appendix to which this was inserted.)

Russell pretending he came to taste some Sherry, which he had bespoke of Mr Shepherd, Mr Shepherd denied upon his oath, that the lord Russell had bespoke any sherry of him, or mentioned any such thing then to him

The lord Howard gave in evidence upon his oath That there was a design of a general rising, both in October and November last, and that the earl of Shaftesbury then acquainted him, he had 10,000 brisk boys ready And after the departure of the earl of Shaftesbury it was thought necessary, for the preventing of confusion, and more orderly managing of the rising, that a select council should be held for that purpose And accordingly the duke of Monmouth the earl of Essex, the lord Russell, colonel Sidney, Mr Hambden, junior and himself met in January last, at Mr Hambden's house in Russel street, and did there certain preliminaries to the rising Amongst others Whether the rising should be in London first, or in the country first, or in both at once And the major opinion inclined to have the rising both in London and in the country at one time That soon after, they held a second meeting at the lord Russell's house, where all the last mentioned persons were present, and where they again debated of the rising, and then came to this resolution, that some person should be sent into Scotland, to invite some persons thence, from the discontented Scots, to treat with them, that they might be assured of what assistance they might expect from the Scots That that matter was committed by them to the special care and conduct of colonel Sidney And that colonel Sidney acquainted him, he had sent Aaron Smith into Scotland accordingly, and that he had given him threescore guineas to defray the charges of his journey

The lord Howard, interrogated by the lord Russell, Whether he said any thing in these debates, declared upon his oath, That though his lordship never used to speak much, yet he did speak in these debates, and consented to what was done

This was the substance of the evidence, though delivered by the witnesses more at large, as will appear by their depositions, printed with the trial A clearer evidence to prove the facts charged, of meeting and consulting to raise a rebellion within the kingdom, and to seize the king's guards, I believe the most experienced person in the laws can never shew was ever produced at the trial of any traitor To the greatest and strongest part of the evidence, which is that of the lord Howard, and so much of colonel Rumsey's, which relates to the general rising, of which the witnesses make full proof, the paper gives no answer at all With what confidence then can the author of that paper introduce a dying man, asserting his own innocence, and charging the jury with forwardness and injustice, when the criminal cannot deny the facts upon which the jury gave their verdict? But these facts, whether true or false, the criminal would not examine And if he could not, or would not assert them to be false, no man of any common ingenuity can doubt them to be true, when sworn by credible witnesses, and found by a substantial jury. Yet, to satisfy the conscience of a dying man, and to cover the scandal of so great a crime from vulgar or partial eyes, these consultations and conspiracies to raise a rebellion, and foment a general rising, are represented to the people only as some discourses about some stirs They may be in Scotland some stirs, but in England they are, and ever were, stiled rebellion

As to the other branch of the overt-acts, of consulting to seize the guards, which the paper makes the only crime for which the lord Russell was condemned, this account is given by the paper, That the lord Russell was at Mr Shepherd's house with that company but once, and there was no undertaking then of securing or seizing the guards, nor none appointed to view or examine them Some discourse there was of the feasibleness of it, and several times by accident in general discourse elsewhere

This account which the lord Russell gives of this matter is rather a confirmation of the testimony of colonel Rumsey and Mr Shepherd, than an avoidance thereof He admits the feasibleness thereof was then discoursed of and at other times likewise They swore, That the persons appointed to view the guards, reported there, that they found them to be very remiss in their duty, and might be easily seized The lord Russell remembers he was at Mr Shepherd's house but once Shepherd swore he was there with that company twice, and at the last time the report was made after viewing of the guards

The seizing of the guards was not the only nor principal fact upon which the lord Russell was condemned, as appears by the proof stated, but it was one of the instances to make out against him the general design of raising a rebellion, as one of the properest ways to secure the general rising, and was sufficiently proved by two witnesses to have been consulted upon to that purpose

Indeed, to what other purpose can any man imagine the lord Russell and his accomplices, who appeared to have been engaged in a design of a general insurrection, upon such proof as the criminal could not deny the fact, should so often discourse of the feasibleness of securing the guards, as is confessed by the lord Russell, than in order to facilitate and secure their design of the general rising? And the discourse the paper owns to have been at the lord Shaftsbury's, touching these matters, who throughout appears to be the principal agent in the design of the general rising, proves the seizing of the guards to be part of the design And though the lord Russell then expressed a tenderness of shedding cold blood, as a thing detestable, and like a popish practice, yet that deluge of blood which must necessarily have ensued in the heats of a general rising, which is evident he pursued to his last, did not at all affect him, because this might become any heroic christian

drawn in armour by the pencil of the author of Julian; and is not unlike to the practices of the ancient christian, so shamefully disguised by the same author.

If then the facts whereof the lord Russell was found guilty by the jury, upon such pregnant proof, be so evident, how is it possible for a dying man, before God and men, to assert his innocency with such assurance, and so frequently repeated in his speech to the sheriff, though short, yet twice repeated? '1. God knows how far I was always from 'designs against the king's person, or of al'tering the government. 2. I profess I know 'of no plot, either against the king's life, or 'the government.'

In the paper delivered, it is thus expressed: 'Whatever apprehensions I had of popery, 'and of my own severe and heavy share I was 'like to have under it, when it should prevail, I 'never had a thought of doing any thing 'against it, basely or inhumanly, but what 'could consist with the christian religion, and 'the laws and liberties of this kingdom.' Again; 'I have always loved my country 'much more than my life, and never had any 'design of changing the government; and 'would have suffered any extremity, rather 'than have consented to any design to take 'away the king's life.' In another place, he thanks God his part was sincere, and well meant, and affirms his crime to be but misprision of treason at most; and infers, so 'I die 'innocent of the crime I stand condemned for:' Also he saith, 'I know I was guilty of no 'treason.' In the last place, he concludes; 'As I never had any design against the king's 'life, or the life of any man whatsoever, so I 'never was in any contrivance of altering the 'government.'

Half an eye may see these strokes are all drawn by the same hand, with all imaginable skill, to quiet the conscience of a dying criminal; and at the same time, by casting a mist before the eyes of the unthinking multitude, to possess them with the innocence of the condemned person, and the cruelty of the government towards him. Let it be considered with what careful restrictions and limitations his innocency is ushered in: That he knew of no plot or no design against the person of the king, or to kill the king, or to alter or change the government: That he never had a thought of doing any thing basely or inhumanly, but what could consist with the Christian religion, and the laws and liberties of this kingdom: That his crime was but misprision of treason at most, and so he is innocent of the crime he stands condemned for. What need of all these cautions, restrictions, and evasive circumlocutions, to a plain man, at the hour of his death, to express his innocency by? If it had been real, a few plain words would have done it better; viz. That he was not engaged in, nor knew of, any design of making an insurrection or rebellion within the kingdom. He heard the proof made, and knew that was the crime laid to his charge, which is high-treason, both at common law, and within the first branch of 25 E. 3. But that was too clear a matter for a dying man plainly to deny; his conscience must have controuled him.

And to let every man understand the subtilty of that paper in declaration of the lord Russell's innocence, with such restrictions, it is necessary to be known, that there were two parts in this horrid design; one was a general rising, managed by a select council, wherein the conspirators, according to their different principles, had their different ends; some were for a Commonwealth, though the fewer in number; others were for continuing the monarchy and government, but with exclusion of his royal highness. Of this latter sort were the duke of Monmouth, and the lord Russell, who plainly sets down in the paper the duke of Monmouth's opinion of him, That they were both of a temper. And the lord Russell gives his opinion of himself, That his earnestness in matter of the bill of exclusion had no small influence in his present sufferings: Though spoken by him with great reflection upon the government, yet it truly seems to have been the natural cause of those extravagancies he was led into; his zeal in that matter transporting him to seek that by force, which the king had before denied in a course of parliament.

The other part of the plot was downright assassinating of the king and the duke of York; this was managed by a council of ruffians, who, according to their principles, judged this the most expeditious and safest way to secure the general rising, and render it more effectual. This was made out beyond all peradventure by many witnesses at the trials of captain Walcot and Hone; the latter whereof, besides the proofs against him, confessed himself to be one of the number who had engaged themselves to kill the king. For this latter horrid fact of killing and assassinating, the lord Russell was not accused thereof, nor any proof offered to make it out.

And therefore his frequent professions of his innocency, as to any plot or design upon the king's life, or to kill the king, or his knowing any thing thereof, and of his abhorrence thereof, as an inhuman, base, vile, and barbarous act, (which epithets the paper gives to that foul fact) are no plain declarations of his innocence as to the crime charged and proved upon him, of conspiring and consulting to raise an insurrection within the kingdom.

And it is evident, by the lord Russell's restraining the expression of his innocency to the design upon the king's life, and to killing of the king, and omitting to mention the general rising, which was fully proved upon him, that the lord Russell intended only that crime for which Hone and Walcot were condemned, of assassinating the king.

The other restriction of his innocency, as to any design for alteration, or change of the government, which he esteemed the best in the world, which amounts to no more than

that he had no design himself, nor knew of any, to throw off monarchy, and to introduce a commonwealth; which is never charged upon him, and may easily be presumed to be such a government as was no ways agreeable to his height of spirit.

But this is no denial of his being engaged in any design to make an insurrection; though his end in such insurrection were far short of killing of the king, or changing the monarchy.

Let it be supposed to be only to over-awe the king, that a parliament might sit to pass the bill of exclusion, and other bills, for the security of the Protestant religion, or other specious pretence whatsoever; which is the best construction can be put upon the lord Russell's case.

That he had a part in the insurrection, is evidently proved, and not denied by him: But he saith his part was sincere and well meant. What that sincere meaning was he doth not plainly tell us, which becomes a dying man to do; but leaves us to conjecture, from the other parts of the same paper, what his sincere purposes were. His zeal for the bill of exclusion, and detestation of popery, which accompanied him to his death, argue his sincere intention in the rising to be something that was for the promoting of the bill of exclusion, and the utter extirpation of popery. Yet he professeth, that notwithstanding all his zeal against popery, he never had a thought of doing any thing against it basely or inhumanly, but what would well consist with the Christian religion, and the laws and liberties of this kingdom.

This again renders the matter difficult, to guess at his sincere meaning in the design. But the compiler of the speech hath so ordered the composition of the sentences, by the discretive particle 'but,' that room is left for the dying person to intend nothing to be inconsistent with the Christian religion, and the laws and liberties of this kingdom, but what was base and inhuman, as the assassination of the king and duke is judged to be; and that an insurrection only to compel the king to pass such bills as his Protestant subjects conceived necessary for the preservation of their religion, was no base and inhuman thing; and therefore not inconsistent with the Christian religion, but for the support of it; nor with the laws and liberties of the kingdom, which allow, in the opinion of too many, both more ancient and modern fomentors of rebellion against princes, a liberty in the people to acquire that which they apprehend to be their right, and for their preservation, by force, which they cannot obtain from their princes by fair means, upon the account of a supreme law for preservation of themselves, and their religion, inherent to all governments.

To this purpose was prepared and published that venomous book of Julian, so much hugged and applauded by the conspirators, as a fit plaister composed of ancient Christian practices, for such consciences who might entertain the least scruple against infamous libelling of their prince, or using any force or coercion upon the government. To the same purpose have been printed, and reprinted of late, divers seditious books and pamphlets; and another was preparing for the press, by one of the conspirators, 'To assert a supremacy in the 'people to determine for themselves, against 'their prince.'

The northern climate hath of late furnished us both with doctrines and examples of the same batch. The compiler of the speech was, without question, acquainted, if not infected, with those doctrines, tenets, and examples; and therefore may be presumed to lie under that great delusion, that it was lawful for subjects to procure from their princes by force, whatever they judged necessary for the preservation of their civil or religious rights, so in the doing thereof their parts were sincere and well meant:

When nothing is clearer by the laws of this kingdom, than that to raise a rebellion, or make an insurrection, be the design or intent thereof never so speciously good, is high-treason. And it is apparent that the lord Russell, or the author of that paper, was misguided in two principal and plain points of law:

First, That meeting and consulting to make an insurrection, and in order thereunto to seize upon the king's guards, which the paper calls stirs, is not treason within the statute of Edward 3.

Secondly, That the lord Russell's being present at the several consults for managing the insurrection, and his part therein, amounted only to misprision of treason; and so concludes himself innocent of the crime he stood condemned for, which was high-treason, for compassing the death and destruction of the king, by conspiring to raise a rebellion within the kingdom.

These mistakes of the plainest points in law are the only supports of the lord Russell's innocency; whereby he comforted himself at his death, and may mislead others into the same ruin.

To prevent which, it is conceived seasonable upon this occasion, to state clearly what the law of the land is upon those points, to the common understanding of every subject.

As to the first point, The meeting and consulting to make an insurrection against the king, or raise a rebellion within the kingdom, be the end thereof never so specious for public good, though the rebellion be not actually raised, is high-treason by the laws of this land. It was so at common law, by the consent of all the books of law that treat of that matter, and no one authority against it. It is so since the statute 25 Edward 3, cap. 2, within the first branch of that law against compassing and imagining the death of the king. The death of the king in that law is not restrained to killing of his natural person, but extends as well to civil death as natural. To conspire to depose the king is equally high-treason with that of killing the king: so for imprisoning of

the king, or seizing or taking of him into the power of his subjects, or for laying any force or restraint upon him, until he do what his subjects would have him. These are all high treason, for compassing his death, either natural or civil; and all overt-acts, which declare the intent of effecting any of these crimes, as all meetings, consultations, and agreements to rise in rebellion, and to seize upon the king's guards, which are his defence against force, and invite the aid and assistance of the king's subjects of any other of his kingdoms, plainly are overt-acts of compassing the king's death; and so have been adjudged in all times, whenever such case came into judgment.

In 2 and 3 Phil. and M. one Constable dispersed divers bills in the night about the streets, in which was written, 'That king Edward 6 'was alive, and in France;' and at another time, in Coleman-Street, pointed to a young man, and said, He was king Edward 6.

These things tending only to depose the queen, were adjudged high-treason, for compassing her death; and Constable was thereupon indicted, attainted, and executed. The case is cited in Calvin's case, Co. 7 Rep. fol. 106. 13 Eliz. Dyer, 298. Dr. Story practised with the governor of Flanders, to invade the realm with force; and declared by what means, and in what manner and place the invasion might be: no invasion following, it was referred to all the judges, to consider what crime it was, who resolved it to be high-treason; because an invasion with power could not be, but of necessity it must tend to the destruction, or great peril of the queen.

Jac. 1. The lord Cobham conspired with sir Walter Raleigh, and other the king's subjects, to make an insurrection within the realm, in order to set up the lady Arabella Stuart to be queen: and to this purpose treated with the ambassador of the arch-duke of Austria, for procuring money from the king of Spain, and persuaded the lady Arabella to write letters to the king of Spain, for his assistance with forces, and letters sent accordingly. Though the insurrection did not follow, but a discovery made before it was put in execution, the lord Cobham, and others of the conspirators, were indicted of high-treason, for compassing the king's death, and the several meetings and consultations for making the insurrection, and procuring the invasion, laid in the indictment. The lord Cobham was tried by his peers, attainted, and executed. The lord Hale, in his Pleas of the Crown, 13, takes notice only of the overt-act of writing the letters to a foreign prince, inciting an invasion, which he allows to be a sufficient overt-act of that treason which was laid in the indictment, for compassing the death of the king

In the same year of Jac. 1, the lord Gray, and other conspirators, met and consulted to make an insurrection, whereby they designed to seize the king into their power, until he should grant them a pardon for all treasons, a toleration of the exercise of the Popish religion, and the removal of twelve of the privy-council; and should make the lord Gray master of his horse, and several others of the conspirators, lord Treasurer, lord Privy Seal, and other great officers.

They were indicted for compassing the king's death, and raising a rebellion within the kingdom, and no other overt-acts laid in the indictment, but several meetings, consultations, and agreements between the confederates, to raise a rebellion for the purposes aforesaid.

The lord Gray was tried by his peers, and had judgment to be hanged, drawn, and quartered.

In sir Henry Vane's case, meeting and consulting about treason were held sufficient overt-acts.

In Plunket's case lately in the King's-bench, the indictment was for high-treason, in compassing the death of the king; the overt-acts alledged against him were, consulting to raise an insurrection in Ireland, and bringing of the French into Ireland, and collecting money in Ireland, and holding correspondencies in France for that purpose. There was no proof of any design upon the king's natural person, which was in England; yet he was attainted and executed for high-treason, though no insurrection or invasion followed: so that there can be no question at this time of day, but that meeting and consulting to raise a rebellion, though it be not an actual levying of war within another branch of the statute of 25 Edw. 3, yet they are overt-acts of compassing the king's death, within the first branch of that statute.

The other gross mistake is, That the lord Russell's crime was only misprision of high-treason.

Misprision of high-treason is the concealment thereof by a person who had a bare knowledge of the treason, without any mixture of his consent. But if the person be present at the debates and consultations, though he say nothing, if he do not immediately reveal, but continues to meet, and be present at their debates, he is a principal traitor. Where a person was not present at the debates and resolves, but is afterwards acquainted with them, and gives his consent thereto, it is high-treason, and not a misprision barely.

This was the case of George Brooke, to whom the lord Cobham related the whole conspiracy of setting up the lady Arabella; who consented to the same, and was indicted and attainted as a principal traitor in that conspiracy. Now the lord Russell, as he puts his own case, of being present at several meetings where seizing of the guards were treated of, and horrid things spoken, argues himself guilty of high-treason, though he make a false conclusion from those premises, that it was but misprision. But the witnesses proving his frequent meetings and consults, and the last of them at his own house, and his express consent to the matters debated and agreed upon, do put it beyond a question to any man that

desires not to be wilfully deceived, that the crime of the lord Russell was not a bare misprision of treason, but high-treason in the highest degree; being to raise a rebellion against the king, the consequence whereof in all probability would have been the destruction of the king, and subversion of the government, if not the desolation of the whole kingdom.

If, after this plain account of the lord Russell's Case, any persons be so hardy to think the compiler of that Paper of greater skill in the laws of the land than the reverend and learned judges, who have judged his crime to be high-treason; the utmost comfort he can expect for his being deceived is, that he shall have the like comfortable speech prepared for him upon the like occasion.

A DEFENCE of the late Lord RUSSELL'S Innocency. To which are prefixed two Letters upon the Subject of his Lordship's Trial. By Sir ROBERT ATKYNS, K. B.

FIRST LETTER concerning my Lord RUSSELL'S TRIAL.

"Sir; I am not without the apprehensions of danger that may arise by advising in, or so much as discoursing of public affairs; yet no fear of danger shall hinder me from performing that duty we owe to one another, to counsel those that need our advice, how to make their just defence when they are called in question for their lives; especially if they are persons that have by their general carriage and conversation appeared to be men of worth, and lovers of their king and country, and of the religion established among us. I will follow the method you use, and answer what you ask, in the order I find in your own letters.

"I cannot see any disadvantage or hazard by pleading the general plea of Not Guilty: If it fall out upon the proofs that the crime is only misprision of treason, and not the very crime of treason, the jury must then find the prisoner not guilty of treason, and cannot upon an indictment of treason find the party guilty of misprision, because he is not indicted for the offence of misprision, and treason and misprision of treason are offences that the law hath distinguished the one from the other, and the one is not included in the other; and therefore if the proofs reach no farther than to prove a misprision, and amount not to treason, the prisoner may urge it for himself, and say, that the proofs do not reach to the crime charged in the indictment: and if the truth be so, the court ought so to direct the jury, not to find it.

"Now, being present in company with others, where those others do consult and conspire to do some treasonable act, does not make a man guilty of treason, unless by some words and actions he signifies his consent to it, and approbation of it: but his being privy to it, and not discovering it, makes him guilty of misprision of treason, which consists in the concealing it, but it makes him not guilty of treason. And if the same person be present a second time, or oftener, this neither does not make him guilty of treason; only it raises a strong suspicion, that he likes it, and consents to it, and approves of it, or else he would have forborn after his having been once amongst them. But the strongest suspicion does not sufficiently prove a guilt in treason, nor can it go for any evidence; and that upon two accounts:

"First, The proofs in case of treason must be plain, and clear and positive, and not by inference, or argument, or the strongest suspicion imaginable. Thus says sir Edward Coke in many places in his Third Institutes, in the chapter of High Treason.

"Secondly, In an indictment of High Treason, there must not only be a general charge of treason, nor is it enough to set forth of what sort or species the treason is, as killing the king, or levying war against him, or coining money, or the like; but the law requires that in the indictment there must be also set forth some overt or open act, as the statute of the 25th of Edw. the 3rd calls it, or some instance given by the party or offender, whereby it may appear he did consent to it, and consult it, and approve of it. And if the bare being present should be taken and construed to be a sufficient overt or open act, or instance, then there is no difference between treason and misprision of treason; for the being present without consenting makes no more than misprision; therefore there must be something more than being barely present, to make a man guilty of treason, especially since the law requires an overt or open act to be proved against the prisoner accused. See sir Edward Coke's Third Institutes, fol. 12, upon those words of the statute, (per overt fact) and that there ought to be direct and manifest proofs, and not bare suspicions and presumptions, be they never so strong and violent: see the same folio, in the upper part of it, upon the word (Proveablement.) And the statute of the 5th of Edw. 6, cap 11, requires that there should be but two witnesses to prove the crime: so that if there be but one witness, let him be never so credible a person, and never so positive; yet if there be no other proof, the party ought to be found Not Guilty: And those two witnesses must prove the person guilty of the same sort or species of treason. As for example, if the indictment be for that species of treason of conspiring the king's death, both witnesses must prove some fact or words tending to that very sort of treason: but if there be two witnesses, and one proves the prisoner conspired the death of the king, and the other

witness proves the con piring to do some other sort of treason, this comes not home to prove the prisoner guilty upon that indictment for the law will not take away a man's life, in treason, upon the testimony and credit of one witness, it is so tender of a man's life, the crime and forfeiture are so great and heavy.

"And as there must be two witnesses, so by the statute made in the 13th year of his now majesty, chapter the 1st (intituled For the Safety of his Majesty's Person) these two witnesses must not only be lawful but credible persons. So that's stated in the 5th paragraph. And the prisoner must be allowed to object against the credit of all, or any of the witnesses, and if there be but one witness of clear and good credit, and the rest not credible, then, the testimony of those that are not credible must ... nothing by the words and meaning of the statute, see the statute. Now were I a jury man, I should think no such witness a credible witness as should appear either by his own testimony or upon proofs made by others against him to have been particeps criminis, for that proves him to be a bad, and consequently not so credible a man, especially if it can appear the witness has trepanned the prisoner into the committing of the crime. Then the witness will appear to be guilty of a far higher crime than the prisoner, and therefore ought not to be believed as a credible witness against the prisoner, for he is a credible witness that had the credit of being a good and honest man, which a trepanner cannot have, and this trepanning proves withal, that the trepanner did bear a spite and malice against the person trepanned, and intended to do him a mischief, and designed to take away his life. Shall such a one be a credible witness, and be believed against him? God forbid!

Then again it cannot but be believed, that such persons as have been guilty of the same crime, ... very ... willing to save ... to the purpose ... others that they may by this service merit their pardon, and save their own lives. ... this reason are not so credible witnesses, such as the statute of the 13th of Car. 2. does require. Read over the whole chapters of Sir Edward Coke of high treason, and of petty treason, for in this latter of petty treason there is much matter that concerns high treason.

"I wish with all my soul, and I humbly and heartily pray to Almighty God that these gentlemen that have given so great proof of their love to the true religion, and of the just rights and liberties of the country, and their zeal against popery ... may appear innocent ... worth, that I cannot easily believe them guilty of so horrid a crime ... them in the time of their ...

"I wish I may ... the heart, fairly to give them the best ... time ... that

wherein I might be any way capable of doing it. I beseech Almighty God to heal our divisions, and establish us upon the sure foundations of peace and righteousness. I thank you for the favour you have done me, by imparting some public affairs, which might perhaps have been unknown to me, or not known till after a long time, for I keep no correspondence.

'When there is an occasion, pray oblige me by a farther account, especially what concerns these gentlemen: and though I have written nothing here but what is innocent and justifiable, yet that I may be the surer against any disadvantage or misconstruction, pray take the pains to transcribe what notes you think fit out of this large paper, but send me this paper back again inclosed in another, by the same hand that brings it.

'There is, nor ought to be, no such thing as constructive treason, this defeats the very scope and design of the statute of the 25th of Edw. which is to make a plain declaration what shall be adjudged treason by the ordinary courts of justice: the conspiring any thing against the king's person is most justly taken to be to conspire against his life.

"But conspiring to levy war, or to seize the guards, is not conspiring against the king's life. For these are treasons of a different species.—Your faithful friend and servant, R. A.'

The SECOND LETTER.

"Sir, I thank you for the unexpected account you gave me by your first letter: but this exact narrative you have now sent me of the trial of that honourable excellent person, my lord Russell, hath ... obliged me. It was a thing I much desired ... I knew not ... I was a little ... of so foul a nature as high treason against a person of whom I had ever entertained a very high ... And though I had a very small and short acquaintance with him, yet no man that ... known any thing of the public affairs, or of our late transactions could be a mere stranger to his great worth. He had as great a name for a true and honest English gentleman and for good temper, and prudence, and moderation as ever I knew any man have, and was generally beloved by all that love our religion and country. I presume your relation of the proofs ... certainly true in every part, and in the very words, and it is a thing that ... the proceedings ... I suppose deliberately ... that I will affirm, that upon this evidence, both that against him and ... (as far as I have been permitted to ...) I could easily have ... my equal ... understanding ... he might to have been acquitted, and had I been one of the jury that tried him, I make no doubt I could clearly have convinced all my fellows, (if they were honest and indif-

ferent) that they ought not to have found him guilty. This species, or sort of high treason that the witnesses inclined to prove against him was a conspiracy with others to levy war against the king.

"The two witnesses, viz. Rumsey and Sheppard, though what they say may raise a strong suspicion upon my lord, and make it probable that he was guilty, yet neither of them do come home and close to the person of my lord Russell as they do (I confess) against the earl of Shaftesbury, sir Thomas Armstrong, and Ferguson.

"The first does not affirm, that the lord Russell did join in the discourse, or agree to any thing in the consult; but only says, he was present; which extends no further than to make a misprision of treason, and this too not directly and positively, as legal proof ought to be to convict a man of treason: the latter, (Sheppard) when he applies what he swore to the person of the lord Russell, only says, he believes the lord Russell was there at that time when the discourse he speaks of was used; which is a very imperfect uncertain proof, and not positive enough: so that neither of these were full witnesses. As to the evidence given by the lord Howard against my lord Russell, it is strange to me, (as the evidence is stated) that any credit should be given to it; that he should be believed against those execrations, that (it seems) he had so solemnly, and so lately, used to the contrary of his evidence; especially when by giving this evidence he must merit his own pardon, and save his own life, which extremely takes off from the credit and weight of his evidence.

"What Mr. West says in reference to my lord Russell, was but bare opinion and hearsay, and is no proof at all in law; so that instead of two plain, direct, manifest and positive, and two credible witnesses, as the law requires in treason, here is not, in my opinion, so much as one positive credible witness. The lord Howard (as your case and narrative states it) is not credible, though direct and positive; none of the other three are positive, though more credible. In the statute of the 25th of Edward the third, of treasons, the word Proveablement, (as sir Edward Coke observes upon it, in his third Institutes, fol. 12) imports direct and manifest proofs, not presumptions and conjectures, and (as may be added) not probabilities: and so the words (per Overt fact) do (as he observes) strengthen that sense of the word proveablement; and the act of treasons made since this king's time, requires there should be two credible witnesses. Now, though the lord Howard was not by the evidence offered against him by the lord Russell, utterly disabled from being a witness; yet I will be bold to say, it made him no credible witness in this case. That the lord Russell made no use of these things in his defence, though a man of parts, is no wonder to me; the ablest man under that terror, and upon so speedy a proceeding, and where it is impossible to be so composed and free from distraction, may easily pass by many just advantages, which a stander-by, with less abilities, might quickly have apprehended. I am far from reflecting upon the court that tried him; this matter that I observed, rested principally upon the jury. And he is found guilty and condemned, and it may be before this comes to your hand, put to death too: if it hath so happened, (as possibly it may that the earl of Bedford, and his other great relations, have prevailed with the king for a respite of the execution, I wish, and heartily beg of Almighty God, that these considerations may yet be made use of to the king, (with whom it then rests) as 'Tabula post Naufragium,' to save the life of this noble lord. Much more than this may be said, were there such an opportunity, before the king (and I so intend it, and no otherwise); and if I might be any ways serviceable in it, I would come up to London barefoot, rather than neglect so good an office. And I ever thought it a severity in our law, that a prisoner for his life is not allowed the assistance of a grave and prudent lawyer, or some other friend, to make his defence for him, even as to matter of fact, as well as to law. I know, it is said, the court is of counsel for the prisoner; but for my part I should never desire to depend upon that only. I know what this is by experience. If the case be in any part of it mistaken, I have lost all my observations, and beg your pardon for all this trouble; it is out of the great honour and zeal I have for that good lord: but the narrative you give is very ably and well composed, and in very good method; and, I think, could not have been better done, which inclines me to think it very true also. I could be contented the earl of Bedford (to whom I am known) might have the view of this letter if it come not too late, and may be thought of any use. I heartily thank you for your favour, which obliges me to be, Your faithful Friend and Servant,

July 21, 1683. R. A."

A DEFENCE of the late Lord RUSSELL'S Innocency: By way of Answer or Confutation of a Libellous Pamphlet, intituled, "An Antidote against Poison."

1. THE Pamphlet stiles itself, an Antidote against Poison: but it is so far from deserving that title, that it may be truly said, That the antidote itself is the rankest poison.

We read in history that the noble emperor called Henry of Luxemburgh, was poisoned in the Sacrament; and pope Victor was poisoned in receiving the chalice. Who could have suspected such horrid villainy in the administration of such sacred and solemn rites? Who could without horror and amazement contrive the mingling of a deadly poison with the bread and water of life? To make those consecrated elements (which ought to be the savour of life unto life) to be the dreadful messengers of sudden death! surely had those outward signs been changed into the very body and blood of the Lord of life, (as they that acted in those execrable villainies professed to believe) there must needs have been a miracle wrought in altering likewise the substance and malignant nature of those poisons, that they should not have wrought those direful effects; which yet they did. There appears the like wicked policy in the author of this pamphlet; who, under pretence of prescribing an Antidote against Poison, under the visard and disguise of preventing mischief, does most deceitfully infuse the worst of poisons, and labours to intoxicate a whole nation. This author would have the world believe, that the noble lord, in the composing of his speech, was wholly governed by his confessor: and that the compiler of it was infected with those doctrines, that the northern climate has of late furnished us with. The very language and spirit of Coleman! Sure the soul of Coleman is by transmigration entered into this author: it is easy to guess at his religion. He supposes all that were present at my lord's trial, must needs be surprised to find the truth of the case so truly and unfaithfully set down in my lord's speech.

But whoever will take the pains to read the trials, published by authority, (which no man will suspect of partiality toward the person tried) will receive abundant satisfaction in the truth of what was said by the lord Russell, and discover the shameless impudence of this malicious author.

The indictment (as we find it printed at large in the trial,) charges the prisoner, That he intending to disturb the peace of the kingdom, and to move war and rebellion against the king, and to subvert the government, and to depose, or put down, and deprive the king from his title and kingly name of the imperial crown of his kingdom of England, and so bring and put the king to death and destruction, 2 Nov. 31 Car. 2, and at other times, maliciously and traitorously, with divers others, did conspire, compass, imagine and intend;

1. To deprive the king of his title and government.

2. And to kill the king, and to subvert the government.

3. And to move insurrection and rebellion against the king.

And to fulfil and perfect these treasons and traiterous compassings and imaginations, the said William Russell did meet, together with divers other traitors, and consult; agree and conclude,

1. To move and stir up insurrection and rebellion. And,

2. To seize and destroy the king's guards.

The operative and emphatical words of this indictment, are the intending, conspiring, and concluding.

The things intended and conspired were,

1. To move and stir up war and rebellion against the king.—2. To depose the king.

3. To kill the king. And in order to the accomplishing of these horrid crimes,

The things concluded on were,

1. To move and stir up insurrection and rebellion.

2. To seize and destroy the guards. This is the very sum and true method of the indictment, if it be truly printed in the trials.

Note, Here is no open act or deed charged to be done by the lord Russell, unless his meeting together with others be meant to be an open act or deed: but then again, that act of meeting terminates merely in consulting, agreeing, and concluding. They met only to consult, agree, and conclude; but they acted nothing in pursuance of that consulting, agreeing and concluding, for any thing that appears in the indictment: so that the meeting properly hath not the nature of an acting or action, or of a thing done. But the effect of the indictment is, that the lord Russell and others did consult, agree, and conclude to do something, but the indictment stops there, and goes no farther, for it sets not forth any thing done at all. So that here is no overt-act or deed, and the indictment is void; for there is no act charged but meeting, and that was merely in order to consult and agree: and they did agree upon a thing to be done, but it is not said they did it, or did any thing towards it. I repeat this the oftener, that it may be the better understood and minded, being very material. Read the indictment.

The indictment is grounded upon the stat. of 25 Edw. 3. cap. 2. (the old statute of treasons.) So the attorney general declares himself, fol. 615, of this volume.

Now let us see how far this charge in the indictment will make my lord guilty of any treason within that statute.

The body of that stat. of 25 Ed. 3. of treasons, is printed together with the trial, (See the trial, p. 616, of this volume) so that it need not be repeated here, though there are some other clauses in that statute not printed in the trial.

The occasion of making that statute appears to be the variety of opinions that then were, what should be accounted treason, and what not; which was very mischievous to the subjects, and gave too great a liberty to the judges of the ordinary courts.

To cure this mighty mischief, and to prevent that arbitrary power of judges, this excellent statute makes a declaration what shall be adjudged treason by the ordinary courts of justice. Not but that there might be like cases or other facts amounting to treason, besides those there enumerated; but those other facts or treasons must not be adjudged by those ordinary standing courts (such as the gaol delivery of Newgate, and the court of the king's bench at Westminster itself are): but in such cases those courts must forbear proceeding, and the case must be reserved for the determination of the king and parliament. See that statute in the printed statutes at large.

So that the court of gaol delivery at Newgate must judge only and proceed upon no other treasons but what are there enumerated and specified.

Now the treasons in that statute enumerated and specified (for the word perimed is the very word used by that statute) are these:

1. Compassing or imagining the death of the king, queen or prince.

2. Violating or carnally knowing the queen, king's eldest daughter unmarried, prince's wife.

3. Levying war against the king. Not a compassing or imagining to levy war, but an actual levying war, that is, bellum levatum, a war begun. And several other sorts of treasons are there specified, not to our purpose to be recited.

The statute further requires, that the person indicted be provably attainted of some one of these treasons by overt deed, that is, some open manifest act or deed done, which must of necessity also be expressly set down in the indictment, and fully and clearly proved at the trial by two witnesses.

See sir Edward Coke's Third Institutes in his chapter of high treason, fol. 12, in his exposition of the words of that statute (per overt fait) and there, fol. 5. upon the words (provablement) he tells you the nature of that open deed that the statute intends. It must be a deed, and not mere words. It must be a deed tending to the execution of the treason imagined. That deed must be an open deed, that is, it must be fully proved, and made open and manifest at the trial by clear proof.

So that if the indictment fail of setting forth one of those treasons that are there enumerated, it is not a good indictment upon that statute.

If it do set forth one of those treasons, yet if it do not set forth some open deed done by the party indicted, that is, such a deed as does properly and naturally tend to execution of that sort of treason set forth in that indictment, in such case also the indictment is not good.

If both these, viz. the treason intended, and a proper, suitable open deed, be well set forth in the indictment, (which make a good indictment) yet if that very sort of treason intended, and that open deed or fact, so set forth in the indictment, be not also fully, clearly, and manifestly proved upon the trial against the prisoner, he ought to be acquitted.

It will not suffice either to prove it by one witness, or to prove any other sort of treason, (not charged in the indictment, nor any other overt deed) other than what is so set forth in that indictment, though it be by never so full a proof; but upon that indictment the prisoner ought to be acquitted, if that special treason, and that special overt or open deed set forth and expressed in that very indictment, be not fully proved.

Now let us examine the indictment in this case against the lord Russell, and the proofs against him, as they are published by authority, and observe how they agree with the statute, and how the indictment and proofs agree the one with the other.

It may be admitted, that here is in the indictment against the lord Russell, a treason sufficiently charged and set forth, viz. one of the treasons specified in that statute of 25 Edw. 3. namely, that the lord Russell did compass and imagine the death of the king. This is not denied, but it is duly charged in the indictment. For those other charges in the indictment, viz. his intending to depose the king, and his intending to move or levy war and rebellion against the king, these are inserted into the indictment as aggravations of that horrid crime of intending to kill the king, or as open acts of the other; but of themselves alone, they are no distinct substantial charge, nor are they any of the treasons specified in this act upon which act this indictment is solely founded. For though by the act of 13th of this king that now is, cap. 1. intituled, An act for the safety and preservation of the king's person, it is made high treason (during the now king's life, only) to compass or imagine to depose the king, or to compass or imagine to levy war against the king, if such compassing or imagination be expressed by speaking or writing (although without any open deed) yet the lord Russell was not indicted upon that statute (as the attorney general himself acknowledged openly at the trial) but only upon the old statute of 25 Edw. 3, so that those late made treasons are not to our purpose.

So that the only treason charged in the indictment, as a substantial charge, is that of imagining to kill the king. And so the lord chief justice agrees in his direction to the jury. See the trial, pp. 635, 636, of this volume.

But where is that other requisite, that other most material part of the indictment, of the open act or deed? without which the rest serves for nothing; for it is not enough by this statute

to make a man guilty of conspiring or imagining the death of the king, unless the party indicted have expressed that imagination by some open deed; and that must be plainly set down in the indictment too, or else the indictment (as was said before) is no good indictment. And it must appear to the court upon the indictment not only to be an open deed, but such a deed as has a natural aptitude and tendency to the execution of that very treason so imagined. And there is no such set forth in this indictment, and therefore the indictment itself was insufficient and void.

And that which seems to have a colour of an overt fact, or open deed, set forth in this indictment, was not fully and sufficiently proved neither: and then, though the indictment had been sufficient, yet for want of due proof, the party indicted ought to have been acquitted.

To these two points or matters shall the ensuing discourse confine itself; and if this undertaking be made good, the Antidote will appear to be a rank poison, the lord Russell's speech justified, and his innocency and loyalty cleared and his honour vindicated.

The overt fact, or open deed, set forth in the indictment (if there be any) are the things said to be consulted of, agreed and concluded on, viz. 1. To move and stir up insurrection and rebellion. 2. To seize and destroy the guards. (Peruse the indictment carefully.)

Now neither of these are open deeds in the nature of them.

The first, which is to stir up insurrection and rebellion; this is a distinct species of treason itself; it is the same with a levying of war (specified in this stat. of 25 Edw. 3, which is the only statute we have to do with in this case of my lord Russell); and if it had been set forth in the indictment as a deed done, or thing acted, that is, if it had been laid in the indictment that the war was actually levied, or the insurrection or rebellion actually raised or stirred up, (as it is not, for it is only mentioned as a thing agreed and concluded on, and not done) yet it had not been a sufficient proper overt fact, or open act, to make it a good indictment: because (as is said before) levying of war is a distinct species from that of compassing to kill the king; and therefore cannot be made an overt fact, or open deed to manifest an imagination of killing the king: for that one species of treason cannot be a proper open act to another species of treason, as will be proved hereafter.

Sir Edward Coke in his third Institutes, fol. 14. in the third clause paragraph of that folio, tells us, that the connexion of the words is to be observed, viz. [thereof be attainted by overt or open deed.] This, says sir Edward Coke, relateth to the several and distinct treasons before expressed: whereof that of imagining to kill the king, and that of levying war against the king, are two distinct species of high treason. And therefore, says sir Edward Coke, the one of them cannot be an overt act for another, that is, levying of war cannot be an overt act for that sort of treason in imagining to kill the king, much less when the indictment does not charge it as a war actually levied, but only an agreement or conclusion for levying a war. Such agreement can be no open deed to manifest an intent or imagination of killing the king. This is the main question between us.

The other only colour or pretence to an overt fact, or open deed, must be that of seizing or destroying the king's guard, For no other but these two are set forth in the indictment, or look any thing like overt or open act.

And this latter is nothing like to an overt fact, or open deed, in the nature of it, for it is not said to be done, but only agreed on, and concluded on to be done. If it had been but alledged in the indictment, that in pursuance of this agreement or conclusion of the conspirators, a view was accordingly taken of those guards and reported to the rest, (whereof the lord Russell was one) that it was feasible, (whereof here is some colour of proof against some of them) this had been more to the purpose. But being laid so imperfectly as it is, the indictment itself must needs be insufficient, for the reasons before given.

But, alas! the noble lord is gone, and he is gone from whence he would not be recalled, to a place of infinite bliss and glory, out of a pitiful malicious world. It is we, it is the king and kingdom, it is the whole Protestant part of the world, that suffers the inestimable loss of him. Not to speak of the unspeakable grief of his dear and disconsolate widow, and other noble relations. 'Factum infectum fieri nequit.' So that we may seem to labour in vain, and it comes too late. But something may be done for the benefit of his hopeful posterity, and some small satisfaction may be made to his noble family, by a writ of error, for reversing of this attainder, and the avoiding of the record; for the Stat. of 29 Eliz. cap. 2, extends only to such attainders for High treason as then had been before the making of that statute, and does not hinder a writ of error in this case, if the king will sign a petition for it.

But to examine this last overt fact, or open deed a little farther;

Viz. to seize and destroy the king's guards.

The guards! What guards? What or whom doe the law understand or allow to be the king's guards, for the preservation of his person? Whom shall the court that tried this noble lord, whom shall the judges of the law that were then present, and upon their oaths, whom shall they judge or legally understand by these guards? They never read of them in all their law books, There is not any statute law that makes the least mention of any guards. The law of England takes no notice of any such guards, and therefore the indictment is uncertain and void.

The king is guarded by the special protection of Almighty God, by whom he reigns,

and whose vicegerent he is; He has an invisible guard, a guard of glorious angels.

'Non eget Mauri jaculis nec arcu;
'Nec venenatis gravida sagittis,
'Crede, pharetra.'

The king is guarded by the love of his subjects:

The next under God, and the surest guard.

He is guarded by the law and courts of justice.

The Militia and the trained bands are his legal guard, and the whole kingdom's guard.

The very judges that tried this noble lord were the king's guards, and the kingdom's guard, and this lord Russell's guard against all erroneous and imperfect indictments, from all false evidence and proof, from all strains of wit and oratory misapplied and abused by counsel.

What other guards are there? We know of no law for more. King Henry 7. of this kingdom (as History tells us) was the first that set up the band of pensioners. Since this the yeomen of the guard; since them certain armed bands, commonly now-a-days (after the French mode) called the King's life-guard, ride about and appear with naked swords, to the terror of the nation; But where is the law? Where is the authority for them?

It had been fit for the court that tried this noble lord on this indictment to have satisfied themselves, from the king's counsel, what was meant by these guards; for the alledging and setting forth an overt fait, or open deed, in an indictment of treason, must be of something that is intelligible by law, whereof judges may take notice by law. And herein too the indictment fails, and is imperfect.

But admit the seizing and destroying of those who are now called the king's life-guard, had been the guard intended within this overt fait, or open deed; yet the indictment should have set forth, that *de facto* the king had chosen a certain number of men to attend upon and guard his person, and set forth where they did attend, as at Whitehall or the Meuse, or the Savoy, &c. and that these were the guards intended by the indictment, to be seized and destroyed: That by this setting forth the court might have taken notice judicially what and who were meant. But to seize and destroy the king's guards, and not shew who and what is meant, makes the indictment very insufficient.

So much as to the indictment itself.

In the next place, let us look into the proofs, as they are at large set forth and owned in the printed trial; and let us consider how far those proofs do make out the charge of the indictment, viz. the compassing and imagining the death of the king: and how far they make out that overt fait, or open deed, (such as it is) of seizing or destroying the king's guards, in order to the effecting of that compassing and imagining the death of the king. And it must appear by proof to be in truth, so intended by the conspirators, and levelled to that end: for if it were done, yet if it were done quite to another intent and purpose, and not to that of compassing the king's death, it does not come home to this indictment.

There are but three witnesses that can be thought to bring the matter home, and to fix any thing upon the lord Russell; Colonel Rumsey, Mr. Sheppard, and the lord Howard.

It is true, two of the three, that is col. Rumsey, and the lord Howard, positively prove a traiterous design, or discourse at least, by some of the company, of making an insurrection or rebellion, or (to speak it in the language and phrase of this stat. of 25 Edw. 3.) of levying war against the king, (for all these signify one and the same thing) and they prove the lord Russell was sometimes present at those meetings: But is that enough? Admit he were present and heard the debate of it, (which yet is not fully and directly proved) yet if he did not join in the debate, and express, and some way signify his approbation of it, and consent to it, it makes him not at all criminous. It is true, his after-concealing of it might have made him guilty of misprision of treason; but that is a crime of another nature, and is another distinct genus of crimes, of which he was not indicted.

Col. Rumsey, as to the overt-fait, (as they would make it) says, there was some discourse about seeing what posture the guards were in: And being asked by one of the jury, by whom the discourse was? he answers, by all the company that was there (whereof, as he said before, the lord Russell was one). So that my lord Russell may (I agree) be understood to be one that discoursed about seeing what posture the guards were in: Nay, the colonel says, all the company did debate it: And he says further, the lord Russel was there when some of the company undertook to take the view of those guards. And being asked by the attorney-general, to what purpose the view was to be? The colonel answers, it was to surprise our guards, if the rising had gone on.

The chief justice observing to the witness that he ought not to deliver a doubtful evidence, and to speak it with limitations, that made it not so positive; as by saying, I apprehend so and so: then the colonel grows more positive, and says further, that a rising was intended; but afterwards he says, there was no debate of the rising. At last the witness being asked by sir George Jefferies, whether the prisoner were present at the debate concerning the message from the lord Shaftesbury to the company then met, and the answer returned to it; he flatly says, the prisoner was present at that debate (which debate did indeed concern the rising). Being asked by the same person, whether my lord was averse to it, or agreeing to it; he answers like an echo, agreeing to it. Nay, then he says, my lord Russell did speak, and that about the rising at Taunton, and that he did discourse of the rising: But what were his words? Being questioned again by the chief justice, whether my lord did give

any consent to the rising, he answers still like an echo, my lord, he did. And this last answer is the weighty part of his evidence, if there be any weight at all.

Now mind the defect of the witness's memory in some other most material passages. He thinks the lord Grey did say something to the same purpose, with the answer delivered by Ferguson to lord Shaftesbury's message.

He does not know (says he) how often he himself (the witness) was at Mr. Sheppard's house where this debate was He says he was there more than once, or else I heard, says he, Mr. Ferguson make a report of another meeting to the lord Shaftesbury. And then he says, that this was all at that time that he remembered; and before this he had said no more against the lord Russell, but that he was present; and after this, upon much interrogating of him, he proceeds to tell a great deal more, indeed all the rest that has been before observed to proceed from him. And after all, he says, he thinks he was not there above a quarter of an hour. He says, he was not certain whether he did hear something about a declaration there, or whether Mr. Ferguson did report it to my lord Shaftesbury, that they had debated it. And the witness speaking of a view to be taken of the guards, to surprise them; the lord chief justice seems to be surprised at that word: The guards! he never met it in all his books. What guards? Why you know it is mentioned in the indictment; but he might yet very well ask what guards: And the colonel answers, the guards at the Savoy and the Meuse.

The colonel says, he thinks the duke of Monmouth, and the lord Grey, and sir Thomas Armstrong, were the persons that undertook to view the guards. And he thinks, sir Thomas Armstrong began it, and Mr. Ferguson. And he says, further direction was given to take a view of the guards, if the rising had gone on (as it never did); and then he mentions the very day that had been appointed for the rising, viz. the 19th of November; and that the message from the lord Shaftesbury was, he thinks, a matter of a fortnight before that day, or something more; for he thinks it was concluded Sunday fortnight after my lord Grey met. The mention of my lord Russell's consent to this rising, comes in at the last, and after many questions asked him, and not till that very particular question was put to him; and he answers in the very same words as the question was asked. The chief justice asked him in these words: Did my lord give any consent to the rising? The colonel's answer was, yes, my lord, he did. But how did my lord Russell signify that consent? What words did he use that may clearly express it? For this is the pinching proof. If it had been certain and cleared by remembering the manner of his consenting, or how it did appear; why was not this put home to the witness? This is the material part of his evidence, without which the rest had not come home to the prisoner: And why did not the witness deliver this of himself? And before his giving this home evidence, he had said, that was all at that time that he remembered: And this was at the same time with that of the message, and of the discourse about viewing the guards. He afterwards doubts whether he was any more than once there with that company, or whether he heard Mr. Ferguson report things to the lord Shaftesbury; which shews a wild kind of memory in a witness, and the colonel is no fool, nor baby; so that there is but one time positively spoken of by this witness. How strangely uncertain is he in the matter of the declaration, to which he was examined! A most noted thing! And he cannot tell whether he heard any thing of it there, or whether Mr. Ferguson told him of it. It is to be suspected too, that what he has delivered positively at last so late in his evidence, and after so much interrogating of him, was but mere hearsay too, and then it would not have been any evidence. He has not, it seems, a good distinguishing head or memory, as a witness ought to have in case of life, and a life of so high a value as this of that noble lord.

And many other material passages this witness delivers under that limitation, as he thinks.

The rising was intended, but never took effect; and the view was no more than appointed and undertaken; but the seizing of the guards, as this witness says, was not to be unless the rising had gone on, which it never did. He speaks nothing of any view made of the guards, or any report upon it: But he swears my lord Russell consented to the rising. That is his stabbing evidence; but by what words, or how he signified his consent, not a word, though mighty material.

But what is this conspiracy for a rising? and a conspiracy to seize the guards? (in case the rising had gone on) what are these to the crime charged in the indictment against the lord Russell, for conspiring the death of the king?

Here is not a word of any such matter, nor of seizing the guards in order to it, no not one word.

And that is the only material part of the indictment (as shall appear more plainly hereafter.)

The second witness, Mr. Sheppard, mentions the meeting (at his house) of the duke of Monmouth, and among the rest, the lord Russell, and they discoursed of surprising the guards; and that the duke the lord Grey, and sir Thomas Armstrong (as he remembers) went one night to view the guards; and the next day at his house they said it was very feasible, if they had strength to do it: And then he says, there was two meetings there, and as he remembers, my lord Russell was both times there. Being asked by the attorney general, besides the seizing of the guards, if there were any discourse of rising; he answers, he did not remember any further discourse, for he was often gone

out of the room: And this is the effect of that he says.

If any thing of this comes near my lord Russell, it is those words, first giving an account of who they were that were met, and that my lord Russell was one of them, he says the substance of their discourse was how to surprise the king's guards. This may be true, if one or two of the company only discourse it, for it does not necessarily affirm, that every one did speak in that discourse, he does not mention one word spoken by my lord Russell, nor that he approved of, or consented to any thing. At the worst, for any thing that he says, it can be but misprision. He can say nothing as to the intended rising. Now colonel Rumsey's evidence is altogether of that rising, and the seizing of the guards was to have been, if the rising had gone on, and this was at the same time that Mr Sheppard speaks to. And yet Mr Sheppard being asked if there was any discourse of rising, he answers, he did not remember any further discourse.

Nor does colonel Rumsey certainly remember any thing of a declaration read amongst them, whether he heard it there or whether by Mr Ferguson's report of it to my lord Shaftsbury, which is one of the principal things that Mr Sheppard speaks to (besides that of seizing the guards). And as to the declaration, Mr Sheppard says, he cannot say my lord Russell was there when that declaration was read.

So they agree in nothing but in the discourse of seizing the guards, and that my lord Russell was then present.

So that as yet the sum of the proof by colonel Rumsey is, that my lord Russell consented to the rising, which is too general, and the sum of the proof by Mr Sheppard is, that my lord Russell was present in company when the company discoursed of seizing the guards, but he knows nothing of the rising.

The third witness (the lord Howard) discourses much about a conspiracy to rise, but he speaks most (of what he says) by report from the earl of Shaftsbury, and from the duke; so it goes for no evidence against my lord Russell, and the chief justice did the prisoner that right, as to declare as much to the jury. And the lord Howard clears the duke from any such horrid act as the killing the king, the duke said he would not suffer it, and if the duke be innocent in that, it is probable that my lord Russell, and the rest of the company that met, had no discourse about killing the king, nor any thought that way, which yet is the great and only substantial charge of this indictment, which must still be minded and observed.

My lord Howard does indeed prove two several consults, one at Mr Hambden the younger's, the other at my lord Russell's about the middle of January last, and after, and that my lord Russell was at both; and these consults were of an insurrection, and where to begin it, and of providing arms and money, and of sending into Scotland to settle an undertaking with the lord Argyle. And being asked what my lord did say, he answers thus, viz. Every one (says he) knows my lord Russell is a person of great judgment, and not very lavish in discourse. But did he consent? was a question asked by sir George Jefferies. The lord Howard answered, we did not put it to the vote, but it went without contradiction, and I took it that all there gave their consent. That lord Russell joined in the council of six, that he approved of his being chosen for one, that he said one word in these two consults, there is not any proof by the lord Howard; only he says, He took it that all there consented. Is that enough? O strange evidence?

I will not here take notice, or examine, how far the lord Howard is a credible witness in this case, but refer the reader to the testimony of my lord Anglesey, Mr Howard, and Dr Burnet, or how far any of the 3 witnesses are to be believed, having all three upon their own testimonies been *Participes Criminis*, and it is supposed have their pardons, or are promised pardons. Not that this is offered to disable them quite from being witnesses, but surely, all things considered, it much lessens their credit in this case, nor does it make them the more credible, because no other witnesses can be had. But then consider that most excellent character given of the prisoner by persons of honour, and of the highest esteem for ability and integrity, and such as contradicts, and is inconsistent with the charge of the indictment; which surely is of weight in the evidence against him, and especially if you give any credit to the lord Howard himself, who upon his oath does declare, as in the presence of God and man, that he did not believe that either the duke of Monmouth, or my lord Russell, had any design to murder the king; which is the only effectual charge of this indictment. These things considered, it seems very strange to me, how the lord Russell could be found guilty of a compassing and imagining the death of the king, for so is the verdict.

This answers most of the observations made by the author of the Antidote upon my lord Russell's speech, restraining the expression, as he says, of his innocency to the design upon the king's life, and to killing of the king, and of omitting to mention the general rising, which, as this author boldly affirms, was fully proved upon him, and that my lord's professions of his innocency, as to any plot upon the king's life, or to kill the king, or his knowing any thing thereof, these (says the author) are no plain declarations of his innocency, as to the crime charged and proved upon him, of conspiring and consulting to raise an insurrection. Nor was there any need of my lord's answering that, for it was little material.

How uncertain, how disagreeing, how unapplicable to the charge of the indictment those proofs are, has been fully observed already; and the author grossly mistakes in his judg-

ment, when he takes the conspiring and consulting to raise an insurrection to be the crime charged in the indictment; for (as was observed before) the charge of the indictment is, the compassing and imagining to kill the king; and that of a conspiracy to raise an insurrection, or to levy war, is none of the crimes or treasons enumerated or specified in the act of 25 Edw. 3, and therefore could not be the crime charged in the indictment, which is grounded only upon that act of 25 Edw. 3, (as the Attorney-General acknowledges) for it is an actual levying of war, and not a conspiring only to levy war, or raise an insurrection, that is the treason specified in that act of 25 Edw. 3. And therefore the mention of other things are but by way of aggravation, for the more ample setting forth of the crime charged, which is of compassing the king's death: And that the conspiring to make an insurrection, cannot be an open deed to prove a compassing the king's death, has been already spoken to, and shall yet be more fully.

Nor is the author more mistaken in his observations upon the matter of fact, and his unwarranted conclusions and inferences raised from thence, than he is in his determinations of matters in law arising from that fact.

The death of the king (says the author) in that law of 25 Edw. 3, is not restrained to killing of his natural person, but extends as well to his civil death as natural: As to conspire to depose the king, to imprison him, or laying any force or restraint upon him; these (says the author) are all high treason, for compassing his death, natural or civil: If so, why then we are at never the more certainty for this excellent law of 25 Edw. 3.

I agree, that conspiring to depose the king, to imprison him, are treasons; but it is not so plain that they are treasons within this law of 25 Edw. 3, upon which this indictment is grounded. It is true, they are made treason by the late act of 13 of the now king, and have by several temporary acts (such as this of 13 Car. 2, is) been made treason: But this proves, that they were not judged by those parliaments, that passed those temporary acts, to be treasons within the statute of 25 Edw. 3. For why then were these temporary acts made? What need was there of them: Sir Edward Coke, 3 Inst. fol. 9, in the last paragraph but one of that fol. says, A conspiracy to levy war is no treason; he means within the act of 25 Edw. 3. But it has been made treason since sir Edward Coke's time, viz. by 13 Car. 2. And let it be remembered, that the great end of making this excellent law of 25 Edw. 3, (as appears by the preamble) was to avoid uncertainty, and variety of opinions, and to prevent the arbitrariness of judges, in the ordinary courts; and the act takes care, that doubtful cases, such as are not plainly within the enumeration of the act, are to be reserved for the judgment of the king and parliament. And herein consists the excellency of this law: 'Quod fieri possit, quam plurima 'Legibus ipsis definiantur: Quam paucissima 'Judicis, arbitrio relinquantur.' And as the learned lord Bacon, in his Advancement of Learning, fol. 117, says, That is the best law which gives least liberty to the judge; he the best judge, that takes least liberty to himself: 'Misera est servitus, ubi Jus est vagum.' And this law is a declaration of law, and therefore ought not to be extended to like cases in the construction of it: And it is made in the punishment of the greatest offences, and is as penal as a law can be; and therefore ought not to be expounded by equity, that is, to be extended to like cases.

It is true, the opinion of the judges hath been, that conspiring to depose or imprison the king, is a compassing or imagining the death of the king. And if a man declares by overt-act, that he will depose or imprison the king; this, says sir Edward Coke, 3 Instit. fol. 6, upon the word (Mort) is a sufficient overt-act, for the intent of killing the king. Mind him well; he does not say, that conspiring to depose or imprison the king is an overt-act, to prove the conspiring the king's death; which is the opinion the Antidoter maintains, and for which he cites all his cases afterwards cited. But sir Edward Coke says, that conspiring to depose or imprison the king being declared by overt act, this overt-act is also a sufficient overt-act for the intent of killing the king.

It is one thing to conspire to depose the king, and another thing to declare that conspiring by some open act: they differ as much as thinking does from acting. Now in the case of the lord Russell, the author of this Antidote, and some others, (as appears by the printed trials) would have us believe that very conspiring to levy war is an overt-act to prove the compassing and imagining the king's death: for which there is not the least ground from sir Edward Coke. First they are different species, as sir Edward Coke observes in his third Institutes, fol. 14, the third paragraph; and therefore (says he) the one of them cannot be an overt-act for another; that is, conspiring to levy war, nay the actual levying of war too, which is one species of treason, cannot be an overt-act for the compassing the death of the king, which is another species of treason. But this is that the Antidoter labours; only, says sir Edward Coke, the overt-act of the one, may be an overt-act for another sort or species of treason.

And I agree it, if the overt-act in the one sort of treason, may as fitly and as properly in its own nature, and as equally, be also an overt-act in the other sort, and had a tendency to the execution of that other sort. And it also does appear by the proofs, to be so intended by the conspirators. As for example actual seizing of the king's guards (not a conspiring to seize the king's guards, and such guards as are not plainly set forth in the indictment what they are) may in its nature be an overt-act, to make manifest the compassing of the king's

death, and is an act proper enough, and has in its nature a tendency towards the execution of the conspiracy to kill the king: but then it must be proved to be so intended and designed, that is, in order to the killing of the king. But if it appear otherwise upon the proof, (as here it did) that it was not so intended, but designed merely in order to a rebellion, and levying of war, (for which also it is as apt and proper in its nature, and has as great a tendency that way) then it cannot be applied nor made use of as an overt-act, to prove the compassing the king's death (as in this case of my lord Russell's it was): for this (as sir Edward Coke well says, fol. 14, the latter part of the third paragraph of that folio) would be to confound the several classes or species of treason: and the confusion of species is abominable in nature.

And where sir Edward Coke seems to comply with the opinion and practice of some judges, that the overt-act of deposing may be a good overt-act of killing, (which with the distinction that I have offered, is just enough) yet he has some hesitation; for he concludes that opinion of his with these words, fol 6, in his third Institutes, upon the word [Mort]. But, says he, peruse advisedly the statutes of 13 Eliz. cap. 1. And why those statutes? Because by those statutes, conspiring to depose the queen is made treason; which needed not (as has been observed already) if it was treason within that clause of compassing the king's death, within the statute of 25 Ed. 3. The like may be observed in many other such temporary laws, as that of 25 H. 8, cap. 22. 26 H. 8, cap. 13. 28 H. 8, cap. 7. 1 Ed. 6, cap. 12, and 5 & 6 Ed. 6, cap. 11.

And it is worthy observation, though by way of a short digression, that in many, if not in every one of these temporary laws of treason, there is an express clause and provision still, that concealment, or keeping secret of any high treason, should be adjudged misprision of treason: as if there were great need of that caution, lest the judges might judge concealing of treason for high treason.

Now to shew the tenderness that the judges heretofore shewed in the expounding of this statute of treasons of 25 Edw. 3, and how cautious they were in extending it beyond the strict sense and letter of the statute, read the case in Mich. 19 Hen. 6, fol. 47, Case 103. A man was indicted in the King's-bench of petty treason (which is declared too by the same statute of 25 Edw. 3, cap. 2.) for killing his mistress, whom he served. And because the words of this stat. of 25 Edw 3, declare it petty treason where the servant kills the master, they were in doubt whether it ought to be extended to the mistress, or not. And there the judges of the King's-bench (before whom the case was) sent to the judges of the court of Common-pleas then sitting, and to the serjeants there to know their opinion of the case. And by advice of all the judges of both courts, it was adjudged petty treason for the servant to kill the mistress, not only within the meaning, but within the very words of that statute; for master and mistress are in effect but one and the same word, they differing only in gender.

Sir Edward Coke says, 3 Instit. fol. 20 & 22. The judges shall not judge *à simili*, or by equity, by argument, or by inference of any treason; but new or like cases were to have been referred to the determination of the next parliament: 'Ubi terminatæ sunt dubitationes Judiciorum,' says Bracton.

Let us in the next place examine the authorities in law, and book-cases, cited by this author of the Antidote, and see how far they make good his opinion, that meeting and consulting to make an insurrection against the king, or raise a rebellion, (which is the same with levying war, within the words of 25 Edw. 3,) though the rebellion be not actually raised, is high treason within this law of 25 Edw. 3. For so he proposes the question, fol. 5, of his book. And if he does not confine his argument to that statute, he says nothing to the lord Russell's case.

To prove the meeting and consulting to make an insurrection against the king, or raise a rebellion within the kingdom, (though the rebellion is not actually raised) is high treason within the statute of 25 Edw. 3, cap. 2, (which, put all together, is the position the Antidote maintains): he cites the case of Constable, mentioned in Calvin's case, sir Edward Coke's 7th Rep. fol. 10, b. and thence infers, that whatsoever tended to the deposing queen Mary was adjudged treason for compassing her death.

And this no man denies; and it agrees with the judgment of sir Edward Coke, in this chapter of treason, fol. 6, upon the word [Mort], where he says, he that declareth by overt-act to depose the king, does an overt-act of compassing and imagining the death of the king: and so says sir Matthew Hale's Pleas of the Crown, fol. 11, towards the latter end. But what is this to the point in hand, which merely concerns a meeting and consulting to make an insurrection, or raising a rebellion, which is the same thing with conspiring to levy war? Conspiring to depose the king, and conspiring to levy war, are different things; as conspiring to levy war is clearly held to be a distinct treason from conspiring the death of the king. And therefore the former of these (as hath been before observed) cannot by law be an overt-act of the latter, as appears by the said treatise of the Pleas of the Crown, fol. 13, towards the latter end. Nor was conspiring to levy war, without an actual levying of it, any treason within the statute of 25 Ed. 3, upon which statute only the indictment of the lord Russell is grounded, as is acknowledged by the attorney-general. And therefore to supply that defect, the statute of 13 Car. 2, does expressly make it to be treason. But the lord Russell was not indicted upon that statute of 13 Car. 2, and for this reason he ought to have been acquitted upon this indictment grounded only upon the statute of 25 Edw. 3.

And if practising with a foreign prince to make an invasion, (when no invasion followed, as the case of Dr. Story was) Dyer 298, be all one with conspiring to levy war, when indeed no war is raised; it is out of all dispute, that such practising, and such conspiring, cannot be treason within the statute of 25 Edw. 3, though it be treason within the statute of 13 Car. 2.

In the case of the lord Cobham, 1 Jacobi, there was more in the case than conspiring to make an insurrection (which is all that the author of the Antidote takes notice of): there was also an actual rebellion raised, as appears by the said little treatise, styled, The Pleas of the Crown, fol. 13, for the people were there assembled to take the king into their power, as that book puts the case of the lord Cobham.

And so it is in the case of the lord Grey: for there they had not only conspired to make an insurrection, but farther, to seize the king, and get him into their power; which is a direct conspiring against his person, which naturally tends to the destruction of his person, and is the same with conspiring his death, as hath been usually expounded: but it is otherwise merely to conspire to make an insurrection, which can be no more than conspiring to levy war. The case of sir Henry Vane, and Plunket, had many other ingredients to mount them up to treason, which differents them from my lord Russell's case.

As to the point of misprision of treason, with which the author of the Antidote concludes, I have fully declared my opinion already in the former part of this discourse; and, I think, plainly evinced, that though the noble lord might be present while others might between themselves privately debate matters, and conclude upon them, yet it did not clearly appear by any proofs, that this noble lord ever gave the least consent to what was so concluded; without which consent it could not amount to treason, but at the most be a misprision only. Nor must any man's life be taken from him upon presumption or probable arguments, but by plain, direct, and manifest downright proofs. But a more strong, and indeed a violent presumption lay quite the other way, that this noble, prudent, and pious lord could never be guilty of such a crime, as to conspire the death of king Charles the Second: it was extremely against his interest so to do; for the life of that king, so long as it continued, by the blessing of God, was the great security, both he and all good Protestants had against the greater danger that might happen by the change arising by the death of that king, of losing our religion, and all our civil and religious rights, as the experience we have lately had, hath sadly taught us. And if any thing were consulted between this excellent lord and those with whom he met, as is more than probable, it was how to secure themselves against those dangers they saw so near approaching, if the life of king Charles the second should fail; there was so great a cause to fear them, considering who was like to succeed in the throne.

The Magistracy and Government of England Vindicated: In Three Parts. Containing, I. A Justification of the English Method of Proceedings against Criminals, &c. II. An Answer to several Replies, &c. III. Several Reasons for a general Act of Indemnity. By Sir Bartholomew Shower.

IN the present age, when the variety and multiplicity of new prints is such, that the money and time required for their purchase and perusal, is more than an ordinary gentleman can reasonably allow; it may deservedly be thought a nuisance to the public to have their numbers increased; especially since the complaint of the ingenious author of the Trimmer's Character, that for this very cause, he could almost have wished himself unable to read; but yet the support of magistracy and government is a noble theme, so useful to the public, and so generally agreeable to the humour of mankind, that the mere subject will (I presume) be an excuse for this publication, if any thing can be so.

At this time of day none would have thought that a necessity should happen of writing upon such a topic, when every English Protestant was entertaining himself with the pleasing prospect of impartial, due, and indifferent administrations, when authority was becoming amiable and easy to the people, when the people were inclining to a zeal and affection for the honour of magistrates; in short, when the law was recovering its clouded credit: in this conjuncture none expected to see all the pillars and posts in the town daubed with plentiful title-pages, (like so many Histriomastixes of William Prynn's) directing their spectators to books of obloquy and reproach, not only on the persons and opinions, but the authority of judges; when neither of the three are corrigible, or so much as censurable any otherwise than in and by a parliament: much less was it expected, that gentlemen of the long robe would appear in print to ridicule their own profession, and expose our law even to the scorn of foreigners. It would not have been so very strange to have seen a doctor of the Commons exercising his wit and raillery on the common law proceedings, when he saw his dearest Diana, I mean his excommunication process, in danger of becoming useless,

and a fair occasion given him for such an essay from the disgust of the people against Westminster-hall.

But none imagined, that satires and invectives upon past proceedings should be writ by lawyers, who expect a farther benefit from their profession by the grace and favour of the government; which if they happen to acquire, according to their expectations, I would only remember them, that mocking is catching in the proverb. There was once upon a time a certain master of arts, who, whilst at Cambridge, did ridicule and expose the clergy of the English Church, by writing the pretended causes of their contempt; but the Templars said, that he, whilst at London, did give an occasion for a third part to the same tune, or at least a new edition of the book, with additions by the author himself, even of his own dull—— as proper for the like use. In petty corporations they who have most complained of other hardships have frequently out-done their predecessors, when once they have got their places. A whining, complaining servant doth often prove a peevish, imperious master; and I am sure in the inns of court, the most noisy, troublesome and mutinous students and barristers make the stiffest and most magisterial benchers. I make no application, but I leave the reader to what he pleaseth. Better things are to be hoped of all concerned in public government.

Since the press seems open, and lawyers books are published without a licence, another may assume the same liberty with equal authority, and with more reason, when his province is only to correct the misrepresentations of things, actions and persons, though made by authors of age, experience, figure, and learning, (I will not say candour or honesty) especially since they are private men, and having vented their own thoughts in print, they remain no longer theirs, but are equally exposed to the censure or applause of every reader. Besides, it is generally presumed, that an author expects a public animadversion, or otherwise he would never have become such. He presumes his arguments irrefragable, and then an answer does him no mischief; and if they are otherwise, he deserves it. And surely he stands as liable to be corrected by others, as others were to be censured by him. And it is more warrantable certainly to write and print for the vindication of former proceedings, than it can be either candid or genteel to arraign or expose them; especially, since to do so, is, and must needs be, mischievous to past, present, and future governments, as experience will unquestionably teach us; but the other is, and will be, of service to future administrations, by maintaining the reputation and credit of judiciary proceedings.

It is well known, that the lord Russell being so unfortunate as to fall under the accusation of treason, was the most pitied of any under those circumstances, by all who knew either his family or personal character; great expectations were then had of the issue of that trial, the event gave great occasion for discourse afterwards, and almost ever since; the printing of his last speech, with the several answers to it, did much augment the talk. It cannot but be remembered how various and different the sentiments of most were upon that subject; the debates concerning it generally concluded in a pity to his person and relations, as a great misfortune upon both, and in truth upon the nation, that a gentleman of such qualifications should be guilty of so much inadvertency, (to say no worse) as to engage so frequently in such consults as he unhappily did. Some blamed the jury, most censured the witnesses, but very few arraigned either counsel or court; and in truth, the fairness and indifferency of that trial was such, that his own relations were pleased, and his enemies angry, with those that then sat upon the bench; and thus it continued till the present revolution.

Then the memory of that unfortunate gentleman was revived by the publication of a defence of his innocency. The name subscribed to the title-page is so great, that I should be afraid to proceed, but that I am resolved not to be known; and therefore if any thing falls from my pen indecent or disrespectful, he must excuse it, as a privilege claimed by authors, especially of books that have no name to them

To begin at the end: for what purpose was that pamphlet printed?

It could not be for the good of the nation, as a means for consumption of paper; for, as I have been told, that is a French commodity.

It could not be for the bookseller's profit, only, for a reason to be guessed at.

It could not be for the sake of that lord's memory, or any of his surviving relatives; for no man will think it a service to them, to renew the thoughts of that unhappy accident in so noble, antient, and worthy a family. In truth, the whole treatise is nothing but a painting to the life the too deep concern of that branch of it in a weak as well as criminal enterprize; for what else doth signify the expression, p. 4, that being present at a consult of traitors a second time, or oftener, raises a strong suspicion, that the party who does so, likes it, consents to it, and approves it! or else he would have forborn after his having been once amongst them! And many other such expressions there are with the like reflections, as pag. 7. that Rumsey and Sheppard, the two first witnesses, &c. raise a strong suspicion upon my lord, and make it probable that he was guilty. And in the same page the author seems to agree him guilty of misprision. And p. 17, he republishes the evidence of Rumsey, that there was a consent, and this the author agrees to be high treason; but he then endeavours to invalidate the credibility of that evidence, by shewing the wildness of his own memory. Now how this could serve the reputation of the deceased, or cure the resent-

ment of his relations upon that account, I confess myself utterly unable to imagine. Nor can any reader suppose the title verified by the book, viz. "A Defence of Innocence," when there is not one word to be read of it but in the frontispiece. Surely there is no thanks due to the author from that family, no more than was an extraordinary fee due to that lawyer who pleaded for a defendant to this effect: 'My client I must confess is a wag, but not so great a wag as the counsel of the other side would represent him; their proof is very strong, but not so strong as they would boast it to be: our defence is but dark and weak, but not so weak as they would argue it.' So that the book could not be writ for a service to that family, unless a concession of guilt can be called a Vindication of Innocence

It could not be for the sake of the government · For it can never be deemed a politic service to rake into old sores, when lenifying and moderate methods are more advisable; and if every thing should be republished which hath given disgust to the people, few would escape the lash, the righteous themselves would scarcely be saved; for abundance of them have tript either in their public or private conversation, and some in both, and that notoriously too · I name nobody Besides, the government must of necessity never allow the doctrines divulged in this pamphlet, unless it is intended that its being and continuance shall be as precarious as a Beneplacito judgeship, and as dependent upon the people's humour, as that is upon the king's: Nor can any government countenance and encourage the arraignment of a considerable number of wealthy worthy citizens, with the printed censure and insinuation of their being a parcel of corrupt, ignorant, injudicious, dishonest, and partial fellows; and this is done to the full, when said, that the contrary would have sworn to a not guilty, or at leastwise they should, if the author had been there But most of his readers are of another opinion, notwithstanding the second letter, p 7.

It could not be for the sake of popular applause; for it is thought, that the treatise will never deserve or procure it, especially if you take it in pieces, and consider them apart, and with sober reflections. So that no man can tell what it was writ for.

When the title of the book, and the name of the author was first published, mankind was full with a pregnant expectation of some rare, abstruse, uncommon learning upon the point of treasons, with which the world was before unacquainted. No man looked for a preachment concerning the body and blood of our Saviour, the world to come, and the guards of heaven, as topics proper for an animadversion upon that trial, especially from such an author. But there is nothing strange under the sun.

The preface is an encomium upon the author himself, declaratory of his readiness for public services, and seems to be calculated for a cooler, or a defence against the heats and rigours of an harsh and oppressive government, for an help to such as may possibly hereafter fall into the like danger and trouble. And to teach the people the fear and jealousy of a possibility of such occurrences again, can never be thought a public service. As to part of the preface, it is so dark, that a slender understanding can never reach the sense of it, I mean that long paragraph, The Copies of, &c.

The first letter begins with a seeming shew of a bold resolution in the author to perform the duty of a friendly counsel, maugre all the inconveniences that might happen to himself thereby. But it concludes with an extraordinary caution and care to prevent all danger, even to such a degree as much diminishes the credit of that invincible and heroic resolution at first boasted of. And if his courage had been so strong, why were not these letters published formerly, and in times, when, in the author's judgment, there was more occasion for their use, than the present can possibly afford? But rather it may be again asked, why they are printed at all, the observations contained in them having been printed not above 500 times already, and perhaps with as much advantage? Was it a secret to the world, that a variance between the indictment and the evidence might be alledged on the general issue? Did no man in town know that treason and the misprision of it are different crimes? Is the distinction between them such a new invention, and so very useful, as to be an equivalent for the want of counsel in capital trials, as the Preface and Letter do insinuate, if they do any thing? Who ever doubted, but that proofs of treason must not be by hearsay or argument only? Was it ever a question, for this hundred years, but that every indictment of treason must contain an overt-act? Or that less than two witnesses was allowable for proof of that crime? Or did any man ever scruple but that Keble's statute-book contains a true copy of the 13 Car. 2 cap. 1. which requires witnesses credible? Now if these questions must be answered in the negative, how can the advice of these letters be assistant to a better defence than was known long since?

The book itself begins with stories of transubstantiation of bodies, and a transmigration of souls, as much to the purpose, as the parson's text was to his doctrine, who preached upon the certainty of the day of judgment from that verse in Genesis, 'And Adam knew Eve, and she conceived, &c.' But perhaps the author intended all that first page for a flourish, and to entice his reader into a patient perusal of what follows, and prejudice him against the sheet he pretends to answer. He is very frank in styling it a libellous pamphlet, and the author some rank bigotted papist; but to what purpose no man can divine, unless it were to expose him to the rage of the mobile; but his name was never posted, and so he is safe from that danger.

I must confess, that it would be a mighty addition to the liberty of the subject, to have the

law established and declared to be what the late judge doth argue it is; for then there would be a freedom for malecontents to endeavour their own satisfaction by conspiracies and consults, and that with impunity. But as the law was, and always hath been taken to be, an English subject hath very little colour for his pretence to such a privilege as that doctrine gives.

The Indictment is, That at such a place and time 'he did compass and imagine not only to deprive the king of his government and royal state, but to kill and put him to death, and to procure a miserable slaughter amongst the king's subjects; and to subvert the government of England, and to raise a rebellion against the king.' Then follows, 'That to fulfil and perfect these treasons and traiterous imaginations, he, together with other traitors, did then and there with them traiterously consult, conspire, conclude and agree to raise a rebellion, and to seize and destroy the guards, of the king's person,' contra, &c. Now whether these last acts be not a natural and genuine evidence of the former, let any rational man judge. But I will particularly prove, that this indictment was sufficient to warrant the judgment which the court gave, and pronounced upon a verdict, that the accused was guilty of that fact in the indictment, and then answer the objections started against it.

First, There is a sufficient treason alledged. And secondly, Here is a sufficient overt-act. Both these I will agree are necessary; and if either were wanting, the indictment was naught. Now it must be agreed to me, that the first is clear and plain; for by the law, to compass or imagine the death of the king, queen, or their eldest son, is high treason. It is true, by the same law, some open act of which human justice can take a conusance, is requisite to be proved; the very words of the statute do expressly require it; and in truth it is no more than what must have been, had no such words been used: for thoughts are secret, and can never be arraigned, proved, or censured, any otherwise than as they are discovered by some overt-act; so that the clause requiring an appearance of the compassing and imagination by some overt-act or open deed, is no more than would have been impliedly requisite, had the clause been omitted. It is the imagination and compassing which is the treason, that alone is the 'crimen læsæ majestatis,' which is prohibited and condemned; the overt-act is not the treason, that is only a necessary circumstance, without which no court can ever take conusance of the other. And it is necessary to alledge some such deed, 'a necessitate rei,' without respect to the words of that statute. I insist the longer upon this, because it is used as an objection, that the clause of 'provably attaint by,' &c. is restrictive, whereas it is not so; for it is only to make that first specified treason of imagination and compassing to be a thing intelligible and triable: and farther to prove this, it is considerable, that this requisite of the overt-act is of use, and necessity barely, and only in the case of that which is first mentioned, viz. Compassing. For the other sorts of treason are acts themselves whereof notice may be had, as levying of war, violating the queen's bed, and the like; and in an indictment you need only alledge the facts themselves, as that there was a war levied, there was a carnal knowledge had, and the like. And this farther appears from the very form of indictments used ever since that statute; for there never was an indictment (and if there were, it could never be good) barely averring an overt-act without an express allegation of the compassing.

Then the matter results solely into this question, whether the fact here laid be naturally and necessarily declaratory of the party's imagination to destroy the king; for if so, the indictment is undoubtedly good; and it can never be called a constructive treason, or a thing devised by the judges interpretation of the statute; for they adjudge no more treason, than what the statute declares, and that is an imagination of the king's death. Now whatsoever is significative of a man's intention or imagination, is a sufficient overt-deed to demonstrate, that that man had such intention or imagination; and whatsoever is expressive or significative of a man's intending, compassing or imagining of the king's death, is a sufficient overt-act to prove and make such a man a traitor within this law. Now that a consult about, and an agreement and conclusion actually to seize the king's guards, and raise a rebellion, are a natural and genuine declaration that the person who did so consult, agree and conclude, did compass and imagine the death of the king, is surely plain enough: for a rebellion, if successful, can determine in nothing else but the king's death, either natural or civil, which is all one within this law. Now he that designs and intends the necessary means naturally conducing to a particular end, that man may certainly be said to intend and design that end, 'Causa causæ est causa causati.' If the deed tend and conclude to the execution of the treason, that is a sufficient overt-act, says Coke, 3 Inst. 12. And in the same book, fol. 6. he hath these words, 'That he who declareth by overt act to depose the king, is a sufficient overt-act to prove, that he compasseth and imagineth the death of the king;' and so it is to imprison the king, to get him into his power; and to manifest the same by some overt-act, this is also a sufficient overt-act for the intent aforesaid.

In 3 Inst. p. 12, it is held, that a preparation by some overt-act to depose the king, or to take the king by force and strong hand, or to imprison him till he hath yielded to certain demands, that is a sufficient overt-act to prove the compassing and imagination of the king's death; (for that this, upon the matter, is to make the king a subject) and to despoil him of his regal office; and so he says it was resolved by all the judges of England, Hil. 1, Jac. 1, in

the case of the lord Cobham, lord Grey, Watson and Clark, seminary priests; and so he tells us in the same place that it had been resolved by the justices in the case of the earls E. and S. Now if we consider the reason why these were overt-acts of treason, it will appear to be only because of their natural tendency to the accomplishment of that particular treason of compassing, which holds the same in the author's case as well as in those there mentioned.

A conspiracy with a foreign prince is agreed by my lord Coke, ib. 14. to be treason, if it be to invade the realm; and an overt-act of such practice to be a sufficient overt-act of a compassing the king's death; and the reason is, because such actions cannot be thought to be intended for any other purpose; and yet that particular act may be accomplished; and it may so happen as that the king's death may not follow, and yet they are overt-acts of that treasonable imagination, because of their conduciveness and tendency thereto. The case of Cardinal Pole was, writing a book of the pope's supremacy, in which were contained incitements of Charles the emperor to an invasion of this realm; and that was held an overt-act of imagining the king's death. In the lord Cobham's and sir Walter Raleigh's case, a conspiracy, consult and agreement to promote an insurrection, and procure an invasion, was held an overt-act, 1 Jac. 1. and their meeting, consulting and agreeing, was laid as an overt-act, though discovered before the thing took effect. Dr. Story's case, which is mentioned by the lords Dyer and Coke, was no more than a practice or persuasion to promote an insurrection and invasion: and the overt-act that was alledged, was the writing of letters for that purpose, which is no more influential towards it, not so much as frequently meeting, consulting and conspiring and at last concluding and agreeing to make an insurrection. The case of Mr. Coleman was no other; for whatsoever the indictment laid, the evidence was only of letters to the like effect (as to this point) with those of Dr. Story; and the case of Dr. Story was before the 13 Eliz. which made a new treason during her life; for the trial was in Hilary term, and the parliament did not begin till April following. A machination or agreement to raise a rebellion naturally tends to the destruction both of king and people, and an advice to it hath been adjudged so. As in the reign of Hen 4, one Balshal going from London, found one Bernard at plough in the parish of Offey in the county of Hertford; Balshal told him, that king Rich. 2. was alive in Scotland, (which was false, for he was then dead) and advised him to get men, and go to king Richard; in Mich. 3, Hen 4. Rot. 4. you will find this adjudged treason. Throgmorton's case is as plain, for his was only a conspiracy to levy war within this realm; he did not join in the execution, and the conspiracy alone was declared to be a sufficient overt act by the judges. It is no answer to it to say, that a war was afterwards levied, for *quoad* him it was a bare consult; his offence was no more than that. In sir Henry Vane's case, meeting and consulting were alledged and held to be the overt acts. The case of Constable, mentioned in Calvin's case, was only an act tending to deposing the queen, as dispersing bills in the night, that Ed. 6 was alive and in France, and held an overt act declarative of his compassing her death, and he was executed for it. And in the report of Calvin's case you have several other cases mentioned, where endeavours to draw subjects from their allegiance have been adjudged overt acts of this species of treason, the compassing, &c.

The word Compass in the statute is of a larger extent than only to mean an actual assault on the the king's person, and an endeavour to cut his throat; it most certainly implies any consult or practice of another thing directly which may produce that effect, as the dissuading people from their fidelity: such was Owen's case in k. Ja. 1. his time, in the 13th year of that reign. This advice was to this effect: that king James, being excommunicated by the Pope, might be killed by any man, and so to do was no murder; for being convicted by the Pope's sentence, he might be slaughtered without a fault, as an executioner hangs a criminal condemned by law: and for this he was hanged as a traitor. He that denies the title to the crown, and endeavours to set it upon another's head, may do this without a direct and immediate desiring the death of him that wears it (so said Saint John in his argument against the earl of Strafford); and yet this is treason, as was adjudged in the case of Burton, and in the duke of Norfolk's case, 13 Eliz. This denying of the title, with motives, though but impliedly, of action against it, hath been adjudged an overt act of compassing the king's death, as it was in John Sparhawke's case, Pasch. 3 Hen. 4. Rot. 12. The like was the case of John Awater, who was indicted for a treason of that nature in Kent, and the indictment removed into B. R. Trin. 18 Edw. 4 see Rot. 17. and he was thereupon afterwards outlawed as a traitor; and so was Tho. Heber at the same time; and words significative of an actual intention have been held so, as are the opinions of Yelver. 107. 197. Arthur Crohagan's case, Cro. Car. 332. and abundance of others might be named as they are reported in our law-books, but I do not particularly mention them; for that their authority in some of them is very slender, and may be ill used, to the straining of rash unadvised words into a signification of a man's compassing, when perhaps the man never thought as he spoke—however all of them do evince, that advised and deliberate preparations moving to a danger to the king's person, have all along been held overt acts of a compassing his death: and some of them prove, that preparatives and motives to the levying of a war have been held treason, as was sir William Ashton of Suffolk, 31 Hen. 6. mentioned in Cro. Car. 119 for making ballads reflecting upon the king, and writing letters to the men of Kent, exciting them to rise to aid

the then duke of York, &c. 'ad guerram levandam,' and no mention of any war actually levied. Germain and Taylor's indictment hath very little more in it mentioned, than the like preparations and incitements to a rebellion; and yet the treason there laid was a compassing of the king's death, anno 2 Ed. 4. The case of Thomas Burdett, in 17 Ed. 4, is at large it appears in the same report of Cro. Car. amounts to no more than the indictment in question, viz. that he compassed the king's death, and to accomplish that intention, he did disperse diverse writings, &c. *ad intentionem* that the people should rise and levy war, &c. the judgment in that case, drawing, hanging, and quartering. The like in Collingbourne's case, 1 Rich. 3, in the same Rep. 122, where he is indicted in like manner, for exciting and moving the people to an insurrection and war; and he incurred the like judgment, which cases are infinitely short of this in question; and it cannot but be wondered that any man, who has read them, should question, whether a consulting and conspiring about rising, and an actual agreement and determination to rise, be an overt act of compassing the king's death. In the very trial of the lord Stafford it is affirmed by sir William Jones, (who was certainly of great authority with the author) that the meeting and consulting together is an overt act, though the thing agreed on be never put in execution; and it is there resolved by the judges, that the same treason may be proved by two witnesses to several overt acts, though one speak of words or actions that were spoken or done at one time and place, and another speak of words and actions at another time and place, which infers that words, much more a consult and agreement, may make an overt act. Even in the case of Stephen Colledge, in which though the trial had been censured, yet the indictment [illegible] was, and in that indictment the treason [illegible] is in this case, that he traitorously [illegible] compassed the king to depose, kill and destroy, the overt acts are, that he armed himself, and advised others to arm, and spoke several words, &c. Here was no war levied, only a preparation, and yet that was alledged an overt act: and as for the words, if they are allowed to be one, with much more reason may meeting, and consulting, concluding, and agreeing to do.

As to the objection, surely there is no weight in the first, which is page 10, that criticizes upon the word 'fair' act, and that it is only a meeting to agree and an agreement to do, but it was not done. Suppose they had concluded and agreed to poison or stab, &c. according to the opinion in that page, this was no treason; for it is only agreeing and concluding upon a thing to be done, but it is not done. He doth in page 13, argue, that this can never be an overt act of compassing the king's death, because levying war is a distinct species of treason, and a conspiring to levy war is not a levying war; and even levying war itself cannot be assigned as an overt act of compassing, unless the indictment were particularly for that, but surely another sort of act that savours of another species of treason, if it naturally conduce to the accomplishing of the first species, viz. that of compassing, it may be assigned as an overt act of it, and sir Henry Vane's case is quite otherwise, for there a levying war was the overt act alledged of the compassing, and allowed by all the judges, and all the indictments in the west upon Monmouth's rebellion were so, and yet drawn by very good advice; besides, what answer can be given to the cases which I have cited, where consults, conspiracies, practices, advices, letters, persuasions, and other motives and preparatives to an insurrection have been held overt acts of an imagination of the king's death, though no war was levied though no insurrection was made?

It is apparent from what was said before, that to take the king prisoner, or to seize his person, is a compassing of his death, and if so, then to sit in council to compass the effecting of that, is an overt act of compassing the king's death; and this case amounts to that. Here was a consultation to seize upon the king's guards, which could tend to nothing but the seizing of his person, and then the consequence is plain. The author [illegible] if it had but been alledged in the indictment that in pursuance of the consult and agreement, there had been a view of the guards, and a report made that the thing was feasible, this would have been more to the purpose. How much more [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] That the [illegible] [illegible] [illegible] [illegible] to them let us observe [illegible] argument [illegible] drawn from them [illegible] the thing was [illegible] [illegible] [illegible] [illegible] [illegible] of the plot had [illegible] [illegible] [illegible] time of the statute? Certainly [illegible] [illegible] [illegible] would consult [illegible] [illegible] to arm [illegible] [illegible] the Tower, [illegible] Hull, and Plymouth fort, would not this be an overt act of treason? And yet our law takes no notice of any garrisons there or any where else, they have no relation to the militia, nor were there any [illegible] [illegible] [illegible] his time, that we read of in our law books. If this be otherwise, why did not the author find fault with Rouse's indictment which was [illegible] at the same time with this in question? Suppose all the gentlemen pensioners, grooms of the stole, gentlemen of the bed-chamber, and the like, killed in the night, and the [illegible] Whitehall broke up, and all the [illegible] [illegible] ket and pistols were taken away, and yet it happened that the king [illegible] [illegible] untouched, would this be [illegible] [illegible] [illegible] murder only? We have no [illegible] book that take notice of arms at Whitehall [illegible] [illegible] [illegible] those [illegible] [illegible] [illegible] [illegible] the same time upon the insult [illegible] [illegible] [illegible] as did any discourse [illegible] [illegible] [illegible]

of an insurrection, would it not then be treason? If not, nothing can be so, unless the king's person be murdered or seized, and the statute should not have named compassing or imagining, but seizing or killing. [illegible] that the guards are in common understanding known to be as [illegible] [illegible] attendance upon and preservation of his person. In common sense [illegible] no man can think but that [illegible] insurrection, and [illegible] their design upon the king's person, and then this is treason, if [illegible] [illegible] in most of his subjects [illegible] cannot [illegible] attack [illegible] his person [illegible] cannot defend him [illegible] guards and [illegible] the same nature) [illegible] then known that they [illegible] known to be [illegible] seize [illegible] person. And [illegible] It [illegible] never [illegible] allowed for law [illegible] seizing all the [illegible] guards is only [illegible] unless we renounce the law [illegible] by inclinations and [illegible] reason and precedents. As to the [illegible] between an actual seizing them, [illegible] consult and [illegible] to seize them [illegible] I have urged [illegible] overthrows it, [illegible] the author [illegible] tendency to the execution of [illegible] intended.

[illegible] upon all the [illegible] and [illegible] obvious to the readers. [illegible] guards [illegible] somewhat [illegible] king will [illegible] [illegible] opinion [illegible] which declare [illegible] affirmative of the old law, and were made only in compliment to a new [illegible] when they prohibited nothing but what was before so, and for the [illegible] conclusion could be made from them for the [illegible] of his assertion if he had [illegible], which since he doth not [illegible].

As to the cases cited by the author of the Antidote, (which I have mentioned) he [illegible] to Constable's case but doth not distinguish it in its reason from that in dispute. He denies the authority and law of Dr. Story's case, which nobody ever denied before him. He says that in the lord Cobham's case there were people assembled but gives not any answer to what the Antidote affirmed, viz. That the overt act taken notice of in the little book called the Pleas of the Crown was only the conspiring to make an insurrection. He doth confess that in the lord Grey's case there was only a conspiracy. He says that in Henry Vane's and Plunket's case there were several other ingredients to mount them to treason, but what they were nobody must learn, at least not from the author, for he names none of them.

He consumes half a page in an encomium upon the judiciousness of that court, which made a conscientious legal scruple, whether the murder of a husband by the servant were petit treason by reason of the difference of her gender. But [illegible] tell us, that the judges of the Common Pleas did upon much deliberation [illegible] of the king's bench, that [illegible] were in effect but one.

In the [illegible] of the first letter, he says, that conspiring against the king's person, is most justly taken to be a conspiracy against the [illegible] but in the book he will not allow a [illegible] and agreeing to seize [illegible] guards which necessarily and commonly known to attend the king's person, to be a conspiring against his person [illegible] which whether it be or not, the next trial of this nation will determine. Now after all, what can be a greater reflection upon the late king, judgment and integrity of the king's counsel, judges and recorder, than to declare and publish in print that the first prosecuted, the second tried, and the last condemned a gentleman in a trial for which the charge had nothing in it of that nature. If true, the late [illegible] it is unbecoming the [illegible] – But as for their reputations, let them justify themselves. It is not my undertaking to explode such a reflection, it is my own and every man's duty to the present government (the king and queen's majesties being both concerned and eminently, too in the consequence of such doctrine) [illegible] to my countrymen, that they may not presume upon the authority of such a defence, for if they do they may find their mistake, when [illegible] through the power of truth, the contrary opinion.

As to the proof I will not take into it, since the author hath represented too much of its [illegible] and 'De mortuis nil nisi bonum,' it [illegible] be thought a grateful province to de[illegible] of guilt, but yet I may say so much that there was evidence enough to justify all concerned in the prosecution and trial, though for several reasons the attainder is fit to be reversed but hardly for those which this author mentions.

Since the writing of this sheet, there came to my hands a treatise, calling itself, The Lord Russell's Case, which savours more of policy than law, and his topics are the rights of the people and power of parliament; they argue the author to be a greater statesman than lawyer, and therefore much too great for me to encounter, and a debate concerning the heads he insists on is neither safe nor allowable without doors. I shall make but three remarks on what he says. First, he may assure himself, that that power from which he argues his law, is now apparently lodged in the commonalty, not in the nobility. Secondly, the king's solicitor (whom he reflects on) twittered more rea-

son and law than yet hath been or ever will be answered: And thirdly, the indictment contained no new constructive treason, but only that which was plainly and directly declared in and by the 25 Edw. 3, if the letters of it make words, and the words sense, and one man may be allowed able to read them as well as another.

Since the writing of the last paragraph, there came to my hands another pamphlet, written by a new observator; but I suppose the judges that shall be, will correct that sort of licentiousness which he assumes in his remarks; which if they do not, they will have fine easy places on it, as well as their predecessors, and much good may it do them!

Ætas parentum pejor avis tulit
Nos nequiores, mox daturos
Progeniem vitiosiorem. Horat.

A SECOND VINDICATION OF THE MAGISTRACY AND GOVERNMENT OF ENGLAND, by way of Answer to the several Replies, &c.

IT is very observable, that since the late revolution, nothing hath more disturbed our peace than the liberty of the press; and amongst all our new prints, the most malignant and mischievous libels on the present government have been written by those lawyers who pretend themselves the greatest zealots for its honour and service; which may be suspected as false, unless it be withal considered, that some modern royalists have nothing recommendatory of themselves, but the miscarriages of others; and others of them have such great ones of their own, that an extenuation or excuse is impossible; and therefore to cloud their own deformities, they would blacken other men's reputations; and, in order to it, they have censured innocence, and arraigned laws; and where a slip or fault hath been, though so small as scarcely to deserve the name of one, they have magnified it into an execrable villainy: And for a colour of such their calumny and slander, they have vented new gospel and law both; nay they have broached such notions to the world, as are directly fatal to that crown of which they boast themselves the makers and supporters; and yet, in doing so, they pretend to merit——

It is strange but true; for the fact is plain, and the consequence too: Upon the present change, the republicans of both gowns did deem it their policy and interest to bespatter and reproach other men's actions, and, like base and mean spirits, gave ill names and words to every thing in which themselves had not been concerned, and made reviling so customary, that it is become the modish sin of the age. It is most certain, the old English honour, frankness, ingenuity and good-nature is quite abandoned from some companies and places in the town, and instead of folly, we have assumed vice in our common conversation; instead of drollery and banter, the new-fashioned wit at ——'s allows nothing as acceptable but lying and slander; nay, the very spark of a courtier hath changed his note; whereas fulsome, gross and false flattery was wont to be his talent, he is now got to the other extreme, i. e. revengeful, weak and false characters, both of persons and actions: Which is the worst is difficult to determine, but falshood is the most predominant humour in both, and that age is surely unhappy, which is plagued with a surfeit of either, especially when the excess is so great as now, that no gentleman can be thought a good companion, no clergyman a true Protestant, no lawyer an honest Englishman, no courtier a faithful servant, unless he can and do rail, and snarl, and scold, and that at things that were justly used in former times, and must necessarily be used in these times, and will be so in all times whatsoever, even in *Secula Seculorum*: These little stinging animals do value themselves upon their honesty, because they find faults, but it is in cases where no eye can spy them, but their own; they value themselves upon their wit, because their censures are sharp and biting; but that is so easy, so very easy a province, that nature teaches even the rudest of her breed to be satirical, and the natural oftentimes outdoes the pretended scholar in ribaldry, and hath perhaps a better faculty that way, than fancy for picquancy of reflection.

Now as the fact is thus criminal and ridiculous both, so must the consequence prove fatal to the government, which they would be thought (but intend not) to support; for when once resolved to arraign all past proceedings, they are forced, for the maintenance of such their reflections, to vent those opinions, doctrines, and rules in divinity and law, which have in every age (save one) been justly exploded, as destructive to the honour and being of the then possessors of the crown; and can conduce to no other end than the utter subversion of this, and every other government, that doth but smell of a monarchy.

It cannot be denied, but in most reigns there have been some occasions given for disgust to the people, that kings have borne too hard upon their subjects, that the subjects have worthily complained of some warps from the law; but no man ever with sense pretended, that this is a reason to induce a belief, that every act of state, and every judgment of law in former times, was arbitrary and unwarrantable: No surely, the publishers of such reflections are of another thought themselves; and some folks imagine, they who formerly were engaged in seditious practices against the crown, would now, upon the present occasion, explode that law, which doth condemn such

practices, that they may with impunity repeat them, whensoever the king or his ministers shall chance to disoblige them, and that this is the true reason of half the new libels and invectives upon past proceedings.

It is now apparent to all mankind, that every line, or at least page, of some men's works are designed only as a courtship to the mob, by bridling the sovereignty, and clipping the prerogative, even to such a degree, as doth absolutely deprive it of those rights, powers, and authorities, which the ancient law, continued usage, and our present representatives, consent to allow it.

To check this growing itch of pamphleting the nation into another change, and to vindicate the rights of the crown, and justify the magistracy of England, from the obloquy which was industriously thrown on it in one particular, there was, three months since, a sheet printed and published, at which some men took offence; but others were of opinion, that its publication was seasonable and well-timed; that its reflections on the trifling defence, which it assumed to answer, were just and smooth, and very soft, considering the occasion given for a more satirical style, from the fondness and incoherence of the defender's expressions and inferences; and that the mode of managing his argument was modest and tender, with a decent and due regard to the memory of the unfortunate deceased, which had suffered more than enough of injury by that pretended justification.

A cholerick and sedulous inquiry hath been made after the author's name; but the inquisitor is still at a loss, notwithstanding his confidence of a certain knowledge who it was, that came behind and struck him, &c. But to give him some satisfaction, after all his fatigue in searching, I will ascertain who it was not; he may assure himself, that none concerned in that trial were concerned or privy to its vindication; and when it was composed and writ, the party intended it chiefly for his own and the world's diversion, from the ungrateful necessity of reading always on one side, by the interposal of a few lines on the other; that our humours might not be quite soured, and our genius turn too peevish, through the influence of satire and libel, with which the world hath too much abounded of late years; nor had there been one word more published upon that subject, but that the authority of the defender doth challenge a vindication, and the word of a priest says, that it needs one; both shall have an answer presently.

But, first, it is remarkable, that this new reply hath got a licence, when none of his other elaborate works could procure one; however, it is possible, that the licenser may hereafter renounce or retract his allowance in this case, as he hath done in several others already, when his superiors are acquainted with the contents and tendencies of that to which he hath given his *Imprimatur;* for it is not to be supposed, that ministers of state will ever be so incurious of their master's honour, and the rights of his crown, as to approve their diminution, when once they perceive it.

The single point which the advocate for magistracy assumed to maintain, was, that the indictment in question was legal and good, sufficient both for matter and form, and did warrant the judgment which was pronounced upon the verdict that affirmed its truth; this seems the principal assertion in that paper, which, whether his precedents and authorities, arguments and reasons, are sufficient to prove, the reader must judge; that the cases he cites, are truly reported for so much as he uses them, none can deny; and that the law is with them upon the whole matter, shall be farther evinced.

But since that sheet hath made some noise amongst angry men, (which was little expected by him that wrote it) it will not, I hope, be thought impertinent to spend a few paragraphs upon the boisterous and blustering invectives and remarks made against its author, in a pretended reply. In his vindication, therefore, I shall observe the temper, the wit, the guess, the reason, the religion, and lastly, the law, of that replication.

As to the temper, it seems to be writ under some disappointment; for the author doth in every sentence declare his passion, and plainly tells us, that he was then discomposed; but whether his displeasure were conceived at a past or present chief, is not so easy to determine: to expose his fury, it is enough to repeat his epithets of daring, bold, impudent, presumptuous, base, ingenerous, insolent, &c. and all this despised by his reputed author, and smiled at by the real one. He is pleased to call the sentence and execution a plain murder; which if so, sure I am, that he is bound in conscience to prosecute an indictment against the judges, the recorder, the grand and petit jury, the witnesses, the clerks, the solicitors, the gaoler, the sheriffs, and the executioner; for they were all concerned either as accessories, or principals, and demerit a halter, if the repliant's opinion be law: but it is observed amongst honest men, that none of these parties shew any fear on't; and the reason they give for it is, because the indictment was as good as their jurisdiction, and the concurrence of those two makes them as safe as an act of indemnity can do; but all this was passion.

As to the wit on't, most of his readers are at a loss where to find it, unless it be in his English verses, which do so hit the sense of the original, and contain such strong and pregnant flights of English poetry, that some of his readers have compared them even with Sternhold and Hopkins; and others are of opinion, that they do not come short of the essays of the two Gray's-Inn poets, one of which translated 'Grotius, de Veritate Christianæ Religionis,' and the other Coke upon Littleton, into rhyme; but the generality do declare, that for height of fancy, propriety of English, and exactness of rhyme, he hath much out-done all those: but for my part, I believe, that last

rhapsody was added, not so much for the ... geny sake, as to ... the answerer with a design to ... e him whensoever an occasion shou... itself, and consequently to do what the whole book complains of, but that advocate is not so much a coward as to be afraid on't.

As for the guess, it is very cunning, and argues more figure knowledge than true judgment in styles, modes, dialects, or peculiarities of speech or writing; for he will have the author of that sheet to be the author of the Antidote, though he never saw it till he had the misfortune to have read the Defence, and his particular idioms are as different from those of the Antidote, as they are from those of the Defence; but this is all guess. He will have it one of the counsel of that trial, because he hath put counsel before court: a cunning man would have guessed the contrary, as supposing it done *fallendi gratia*, for the sake of disguise; but he may be assured it was mere accident, that occasioned that fault. He will have it to be the then solicitor because of his reputation, which is supposed to be touched in that Defence: but his readers think, that that gentleman's figure for learning, honour, and virtue, is so far above the reach of a little pamphlet, that all the virulent reproaches of the Reply cannot sully it, nor is it in the power of his tongue or pen to prejudice his character in the world; but however, it is prudent to suppose to myself an eminent adversary: that if a foil be my fortune, it may be the easier.

But since we are at guessing, the word guesses, that he who wrote the Reply, did write the half sheet called the Justification; and it is pretty sportive to read the justifier commending the defender for a learned worthy person, and the replicant doing the ... office for the justifier; and that in the ... words commended him ... he ... a whole page in the fulsome ... the ... small bull author, and rejoice that the ... was done this hands, which ... a very pretty jest. However ... R for A and A for R and R A still ... much better than the contrary practice, of which some authors have been guilty.

As to the reasoning part, the reader must excuse my brevity, for in truth there is very little in it of that nature, however ... remarks may quicken and revive his faculty against the next turn. The advocate owns it to be writ in answer to his Defence, *ergo* it reflects upon the nation's wisdom. He expresses a resentment at my lord Russell's engaging in such a weak and criminal enterprize, *ergo* he reflects upon the nation's justice. He names the lord Russell, (though with the most tender appellations that could be used) *ergo* he reflects on that lord's memory. He vindicates the indictment as good, *ergo* he justifies all the proceedings in that case. He argues, that the sentence was legal upon such a verdict, *ergo* is against the reversal. He puts a case, offers a point, and makes a proof on't, *ergo* he is ... impudently impudent. These and such-like, are the inferences, and do deserve a laugh.

As to religion, I see none in it, unless it be in the mention of the devilish powder plot, which is still as much to the purpose of his Reply, as the story of transmigration of souls ... to that of his Defence: only meekness is transparent in his style, humility in the title page, and true christian charity in his menaces of an exception out of the act of indemnity, which he repeats three or four times at least, as if his whole interest were designed to promote it. The gentleman's danger is from public and scandalous actings in the eye of the world, which were (says he) labouring to support the government, every man knows what sort, lashing the innocent with a bitter and sharp tongue, and ... of juries with ... flourishes. Now to examine a little these three monstrous transgressions, let us go backwards. As to ... a duty can never be a crime, ... truth to his master, while such, every advocate is to do his utmost, and a failure in it had deserved both the worst of ... punishment, which the replicant could invent, or his interest procure; for all mankind must ... that the now servants of the present crown are obliged to do the like upon the like occasion ... if otherwise the Jacobite's side will be the ... I will not reflect on the weakness of the juries that were thus inveigled if any such there were, but rather suppose, that ... witnesses not the pleading ... their consciences ... is false and needs no other ... to the first, that gentleman's ... afterwards is as ... his ... it ... were any, ... however ... to ... and ... of company ... censure,

... Majesty's ... Crown ... Po... ... to decypher ... volumes of noted trials. And perhaps if the ... of May 10, 1690 should chance to be revived, during ... and ... may seize other men ... as well as those that ... therefore thought ... to sit down quiet, and forgive and forget what is past ... God and their majesties for the future ... and not be labouring the ... one another, for if any should be ... fool, the knaves will get the better of it, and the righteous scarcely be saved. So much for religion.

Now for the law, if we can find it. But because the defender seems somewhat displeased at the repetition of that unhappy lord's name, whose case gives occasion for the present question, let us therefore put it like mooters, John a Styles was indicted, for that he, at such a time and place, did compass to deprive his natural lord and king, that then was, of his regal state, and to destroy his life, and to subvert the government, and raise a rebellion, and to fulfil that imagination, he, together with others

did then and there consult and agree to raise a rebellion against the said king, and to seize and destroy the guards of the said king's person, contrary to, &c. The question was not, whether J. S. was not guilty, nor if the witnesses swore false, whether his attainder were fit to be reversed; but the dispute was, whether that indictment was legal; whether supposing J. S. to be found guilty, the court that pronounced the sentence of treason against him ought to have arrested such judgment on the motion of J. S. that the indictment was insufficient. The sheet argues, that the indictment was good, and consequently the sentence pursuant thereto was warrantable by the laws of this land. The argument seems founded both upon the reason of things, and the authority of precedents.

First. The reason alledged was, that the last part, which in lawyers terms is called an overt act, was a natural and genuine sense or declaration, or overt signification of the first part, which is an internal secret thought, *i. e.* the imagination and compassing, which is the treason prohibited and condemned. That the latter directly and consequentially tending and inducing, in the common sense and reason of all mankind, (excepting the defender, and two or three more) to the accomplishment of the former, makes a good and sufficient charge within the statute Edw. 3. A repetition is tedious, and an abridgment is scarcely possible, the whole sheet being but a breviate: I shall therefore refer you thereto.

Secondly, the authorities there urged, are either the opinions of judges and other lawyers, or precedents of indictments of the like, or the same nature, from which the legality of this may be justly concluded: The substance of them on the whole matter is, that overt acts to depose the king, or despoil him of his regal office, or take him by force or strong hand, or to imprison his person till he yields to the demands of those who practise such endeavours, are sufficient overt acts to prove the compassing and imagination of his death. That levying war, causing an insurrection, promoting an invasion, nay, that consults, conspiracies, practices, advices, letters, persuasions, and other motions and preparations to an insurrection or invasion, though none succeed, have been held overt acts of imagining the king's death. I will not repeat the cases, but as occasion offers from the other side.

The objections there mentioned and answered from the penning of the statute are too trivial to deserve a remembrance, nor would they have ever been thought otherwise, but that J. S. was a noble person, and the defender a great man, and the prefacer thought so too, either by himself or others These and such-like ingredients, have made some semblance of difficulty: And in truth, had there been a real doubt in the case, the author of the remarks on that trial, who wanted neither sense nor will to censure it, had his opinion so inclined, I say he would certainly have fallen foul on it in those invidious observations of his upon the late times. He quarrels with the legality of the jurors, the defender with that of the indictment, and both with the evidence. The author of the sheet differs from them in the two first, but agrees with them in the last, that testimony delivered for fear of life, or hopes of pardon, or other reward, is hardly creditable; but that is not the point; Let us see if the replication doth overthrow the charge as insufficient; and for my part I cannot find a line of argument in it, but only it is naught, because it is naught. The consulting and concluding to make an insurrection and rebellion, and seize the king's guards, is not a declaration of the party's compassing the king's deposal or death; and why? Because conspiring to levy war is not a levying war, and levying war is a distinct treason; that is the substance of the tenth page, if I can read: The sheet said truly, that levying war itself might be alledged as an overt act of compassing, and hath been so frequently, and meeting and agreeing to rebel and seize the guards, hath a direct tendency to promote a demise of the king either natural or civil, and therefore might as well be alledged an overt act as most things whatsoever.

I had almost forgot one clause, and that is the unnecessariness of making 13 Car. 2. If it should be as the advocate argues; I suppose he means the first paragraph, for the second is agreed to be introductive of a new law, &c. but the first is only a paraphrase upon the 25 Edw. 3. It is thus, 'That if any person or persons 'whatsoever shall, within the realm or without 'compass, imagine, invent, devise, or intend death 'or destruction, or any bodily harm, tending to 'death or destruction, maim or wounding, imprisonment or restraint of the person of our 'sovereign lord the king, or to deprive or depose him from the style, honour or kingly 'name of the imperial crown of this realm, 'or of any other his majesty's dominions or 'countries, or to levy war against his majesty, 'within this realm or without, or to move or 'stir any foreigner or stranger with force to invade this realm, or any other his majesty's dominions and countries being under his obeisance; and such compassings, imaginations, 'inventions, devices or intentions, or any of 'them, shall express, utter or declare by any 'printing, writing, preaching, or malicious advised speaking, being legally convicted thereof by the oaths of two lawful and credible 'witnesses upon trial, or otherwise convicted 'or attainted by due course of law; then every 'such, &c. shall, &c.' Now what is this but a confirmation of the old statute in words at length; which was agreed to be so in the House of Commons, 1 Jac. 2. When a motion was made to renew that law, the lawyers answer was, that the 25 Edw. 3. did the same thing; and a man may boldly say it, that here is nothing declared treason, but what had been adjudged so before, and attainders and executions had pursuant to it: The sheet mentions cases enough, and to the purpose, though

some think otherwise; but I will not repeat them.

In the eleventh page the reader is referred to the Justification in the half-sheet; and therefore let us examine that a little: A third part of it is spent upon the evidence, but that is not within my province, which is only to vindicate the Vindication. As to the rest, the force of it, if any, seems only to be founded on his first assertion, the conspiring to do a thing is not the doing a thing; and he quotes two great men's names for it: For I would agree that though he had spared the authority to justify it; but this is sufficiently answered in the sheet: he offers an argument from the late statutes declaring treasons, because they were temporary; but I answer as the sheet doth, they were in affirmance of the old law, and I can shew him three or four temporary, and an hundred other acts of parliament that are so, and therefore that is no argument at all: but I am, as the party I justify was, confined to a sheet, and therefore cannot inlarge.

He lays down a rule for construction of statutes, that a thing particularized in one part is not to be construed within the general words of another part; but that rule hath near four-score exceptions in the [illegible] comes not to this case; for [illegible] compassing the king's death made [illegible] declared by overt-act, then levying war [illegible] treason: Now, says the replicant, nothing can be an overt act of, and conduce to promote and accomplish the last, that doth any ways concern the latter: I say it is a *non sequitur*; for there are several instances mentioned in the sheet, which respect the levying war, and yet are a genuine evidence of the intention and compassing; and if so, the judges who have ruled such indictments to be good, did neither assume an arbitrary power, nor transgress any rule of law, as the half-sheet insinuates.

Then the lord Cobham's Case is endeavoured to be answered, by a wonder, that sir Edward Coke, late lord-chief justice, and then sheriff, should differ from Mr. Attorney Cook; for we know his thoughts in sir Walter Raleigh's time, and his speeches in Car. 1, his time; they are as different each from other as the times were, and in this particular that gentleman hath had more followers than precedents; but the query is, What is law?

Then sir Henry Vane's Case is endeavoured to be answered by this, that Syderfin mentions not the overt act in the indictment, but he doth say, the treason alledged was a compassing the king's death; and every man knows what sir Henry Vane did to accomplish that: He neither signed the warrant to execute that murder, nor was he actually concerned in it. The justifier says, he does not remember it printed any where but in Syderfin's report: For the refreshment of his memory, I will tell him of another book where it is, and that is Keble's first volume of Reports, 301, and there the indictment is said to be for compassing the king's death, and endeavouring to accomplish the treason, by changing and usurping the government, and levying war; which case doth directly overthrow all the defender's, justifier's, and repliant's arguments from the distinctness or difference of the sort of treason.

Then, for Dr. Story's Case, he says, it is hard to justify it for law; whereas there are above forty places in our printed law-books, where it is cited and agreed to be law: Now, it is pretty odd, that a case so resolved, and so ratified, should 118 years after be arraigned in print; for it was Hil. 13 Eliz. If any thing be law, that is so, and not distinguishable from this case in question, but that the evidence was different, which the justifier would make a reason to invalidate this indictment; the logic of it passeth all understanding: Besides, it is observable, that the benches were filled both with learning and integrity in 1571 and 1662; neither of those times were Tory or Popish; and in Dyer, 298, the reason given was, that it could not tend but to the great peril of the king's person, and therefore an attempt to promote such invasion, though none followed, was adjudged as aforesaid. In 2 Anderson, pl 2, fol. 5, Grant's Case, it was held. That when any person intendeth or contriveth to levy war, for a thing which the queen by her law or justice ought or may do in government as queen, it is not material whether they intend any hurt to her person; but if they intend to levy war against the office and authority of the queen, that is enough; and that resolution overthrows the justifier's notion, that J. S. his design was only to defend the laws, though the 13 Eliz. also was then in force; it is a good argument to answer that pretence.

Now I have repeated and observed all the replication or justification offers in answer to my friend's sheet, the reader may perhaps expect some new matter, not so much for confirmation, as to give occasion for a farther defence. In sir Fr. Moor's Rep. fol. 621, pl. 849, on the trials of the earls of Essex and Southampton, before the then high steward, the justices did there resolve, that when the queen sent to the earl of Essex the keeper of her great seal, and others, with a command to him to disperse the persons armed which he had in his house, and to come to her, and he did refuse to do so, and continued the armour and armed persons in his house, that this was treason; and they did also resolve, that when he went with a troop of captains and others, from his house to the city of London, and there prayed aid of the citizens to assist him in defence of his life, and to go with him to court, that he might get into the queen's presence, and that he might be sufficiently powerful to remove from her his enemies, who were then attendant, that this was high treason, because it tended to a force on the queen, &c. I make no inference; let the reader do that, it is plain, that an actual mental intention of hurt is not material in the one case or other. As the duke of Norfolk's Case is related by Camden in his History of Q. Elizabeth, 163, the

treason which the duke confessed, was a plot to seize upon the Tower of London, and deliver the queen of Scots, and that is all.

There is nothing remains in doubt, but the legality or illegality of the king's keeping guards for the preservation of his person; they say the law takes care of him, and therefore he is to take none of himself; and that the judges are his guards, and therefore he needs no other; that Henry 7, was the first that had any other. But let us reason a little: Can it be supposed, that he should be so sacred in his person, so great in his power, and of such authority as to make war or peace abroad, and raise forces and suppress them at home, as the danger or defence of his realm should require, and not be able to provide for his own personal safety *de præsenti?* Can he only punish by his judges afterwards, or prohibit by proclamation before, but not defend himself for the present? Is it sense to suppose it? The kings of England might have, and actually had, soldiers or guards (call them what you will) even in times of peace, and long before Hen. 7, as well as continually since; I may be so bold as to defy any man to shew me the year, the month, the week, or the day, since the conquest by Will. 1, that England was without armed men, actually upon duty in some part or other of the nation. This sheet is not intended for a studied argument on this subject; and perhaps it would be difficult to justify a standing army as warrantable, when there is no occasion for it; but to say he cannot by force, even by force provide for his own personal safety, when he apprehends it in danger, as every English king hath continual reason to do, especially if some men's doctrine prevail, it may be modestly affirmed unreasonable: Hath not every subject power to keep arms, as well as servants in his house, for defence of his person? Is not his mansion called his castle? And yet the law protects him too by prohibitions *a parte ante*, and punishments *ex parte post*: There are many tenements in England, which oblige to the annual payment of certain sums towards soldiers wages, for defence of the king and kingdom; there are others obliged to the annual finding certain quantities of grain in kind, for the supplying the king's castles and garrisons, as well as houshold; which being annual, do demonstrate the lawfulness of their continuance, even in times of peace; and their being immemorial, do conclude a common law right in the kings of England to have those occasions, as they do conclude him a right to have them supplied by such-like services: Nay, grand sergeantry is either by services of attendance on the king's person in time of peace, or for military aids in time of war. The crown may raise forces by commission, or the militia, to suppress insurrections, in case the civil power of the sheriff is not sufficient or ineffectual. The kings of England have the sole power and force of the nation: complaints have been in parliament against billeting soldiers contrary to the will of the hosts, but never for maintaining a guard for their own person at their own charge; complaints have been made of a standing army, but never of a select company for his personal preservation; a terror to the people may as well be pretended from his coachmen, footmen, or grooms, if their numbers be great: besides, for a competent power in arms he always may have occasion, when his subjects know nothing on it; it is his province to foresee and prevent, as well as suppress and punish, domestic tumults; and the business of war is separately his office, and that exclusive of his subjects, any otherwise than as they are bound to obey and fight, or desired to assist with aids and subsidies; and for this, to avoid a numerous volume of citations, I'll name one notable rule or two in parliament, 6 Ric. 2, Mem. 9, the manner and way of the prosecution of the war being given in charge to the Commons to advise upon, they answered, that this 'nec doit nec slayt' appertain 'al eux, mes al Roy;' and so they did, 31 Edw. 3, Parte prim. n. 11, and 2 Ed. 3, n. 5. It is true, in 5 Ed. 2, n. 1. ordinances were made, that the king without the assent of his barons could not make war; but those that were repealed and damned, 15 Edw. 2, Parl. Rot. M. 13, because prejudicial to the royal power of a king; and this is sufficiently affirmed by the act concerning the militia, in Car. 2, his time. It is well known in what time Bryan chief justice said, that if all the subjects of England should war with the subjects of another kingdom, that this is no war unless the king denounces it: it suffices for my friend's point, that the king may lawfully have armed men or guards, when himself judges his person or people to be in danger, or stand in need of them: and that he may, when reasons of state will not admit their publication to the world. But however, some standing force the crown ever had, and ever will have, though not always to such a degree as shall be burthensome or oppressive; and our old law-books say, that arms as well as laws are necessary for the prince, not only in, but against the times of necessity, I mean war or tumult: besides, in Bracton, lib. 2. cap. 3, de Corona, it is said that 'Crimen læsæ Majestatis' is the greatest crime, because of the greatness of the person against whom it is committed; his description of it is, 'Presumptio contra personam ipsius Regis;' then when he particularizes the several sorts of treason, the first which he names is, 'Si quis ausu temerario machinatus sit in' (*i. e.* towards) 'mortem domini Regis, vel aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui, licet id, quod in voluntate habuerit, non perduxerit ad effectum.' I will make no inference, there needs no paraphrase, the words are plain; an act tending to the destruction of the king's host is high treason against his person: 'Agere ad seditionem exercitus Regis est præsumptio contra personam Regis, et præsumptio contra

'personam Regis est crimen læsæ Majestatis:' now can Bracton be thought to speak only of treasons in time of war? Glanvil, lib. 14, cap. 1, 'Crimen læsæ Majestatis dicitur d[e] 'seditione domini Regis, vel regni, vel exer'citus;' and Fleta, lib. 1, cap. 20. 'De se'ductione exercitus sui: et cap. 21,' the same words, 'Seductionem ejus, vel exercitus sui;' this was the sense of the old law, and is very appositely applicable to the case in question, as I could easily shew, would my paper bear it. There is one thing which I had quite forgot, and that is, that the instrument of grievances which the prudence of the present parliament hath provided, complains of a standing army; the answer is easy, it is not of personal guards: and the wise inquiry of the House of Commons, into the quantum requisite to maintain such and such forces during the present occasion, and of the expences of the crown in houshold, courts, guards, &c. afterwards do plainly shew, that that was not the intended grievance. Now, to sum up what is not answered at all, or endeavoured to be so by the defender, nothing is said to the reason of the thing, or the necessity and nature of an overt act, to the opinion of Coke in the places cited, to the case of sir Walter Raleigh, the case of the Cardinal, the case of Mr. Coleman, the case of Constable, the case of Owen, the case of Burton, the cases of Sparhawke Awater and Heber, the indictment against sir William Ashton, Germain and Taylor, and Thomas Burdett, Collingbourne and Colledge, nor to the opinion of the judges in the lord Stafford's case, as if it were all impertinent; but the reader is judge if it be so.

Now for the prefacer, I'll be as short upon him as he was upon my friend; he said that the sheet needed a vindication, and I have given it one; and if this needs another, I hope the crown will find a friend to write some third. He seems so used to the word libel, that he cannot forbear calling it an infamous one; he says, it has not one true material word in it. I'll remember him of one, that mocking is catching is the proverb, that is 'A 'Grumbletonian in the stirrup generally proves 'a tyrant——in the saddle;' that is enough for him to remember: if he wants any more truth, and that he may not say, this hath none in it, treasons are easier committed than distinguished, by some men especially; and the reason why I say this is, because of his octavo preface, where he is grumbling still, for I always thought that he had smarted too much for libelling on ministers of state, and male-administrations, to venture again; but when a priest meddles with law, he is like an apothecary at politics, he generally runs himself into a noose; for he will never leave off until he is advanced one way or another. To conclude, the design of the sheet was to justify the prerogative of the king and queen, and the rights of their crown; and the republican is angry that either should have any, and from th[illegible] flames the passion; nay, rather than it should be allowed, they will attempt another change, from which good Lord deliver us, Prov. xxviii. 2.

During the composure of the premises, news was brought me, that another pen had been procured to attack the Vindication, viz. The author that runs a-muck at all mankind, except his own patrons: a deserved and full remark upon so voluminous a book, is not here to be expected; however, this Appendix may serve for an advertisement to the world, that the new replicant is in several particulars obliged to solicitor Coke, and the other regicides defence on their trials for much of his materials. Time is wanting to shew the parallel; at present it is fit to be observed, that his blind side is also apparent, consequently capable of a sufficient answer; and to give my reader a specimen thereof, I will take notice of a few (amongst many) mistakes, both in fact and law, which he hath wilfully committed. In the first page he says, that to justify what hath been taken ill, accuses the present government of injustice; which is false. In pag. 2, he says, that the Vindication ventures on a point of law, which it pretends is the result of the evidence given; there is no such pretence in the whole paper, the only debate was upon the indictment. He says, in the same paper, that it is said his relations were pleased with the justness of the trial; it only says, his relations were pleased, and his enemies were angry [w]ith those who then sat upon the bench, and that is true; for some of his relations cannot [d]eny it, the fact is so well known. The last line of page 3, and first of the next are also false; for it was neither written, perused, nor approved by any of his pretended criminals. I believe they thought the point too clear to need a vindication; but this is just like his wonted positiveness in his remarks; where, for instance, he says, that one of the judgments he cavils at, was the first that was ever given without argument or reasons delivered in court, which is also false; for in Plowden's comment, 459, in sir T. Worth's case, the author takes express notice, that the reasons of the judgment were not disclosed when the same was pronounced; and fifty other cases I could name him of the same, but one instance is enough to falsify a general indefinite position, though there are several more even in that [v]ery book.

But to run over his volume, pag. 2, is only a farther scurrilous reflection to vindicate his own remarks, and an impertinent bombast of words on the phrase of English proceedings. the third page assigns four reasons of printing, the two last are applicable to himself only, and he thinks so of the fourth, or else his story is foolish like—. In the fourth page he bolsters himself in his raillery, by resorting to his refuge of the parliament's authority that reversed the judgment, which all men agree to be just, but it was not because the recorder did not arrest the judgment on that trivial exception to the indictment, but because the prosecution was

supposed malicious, and the evidence supposed false or deficient, or both

The fifth, sixth, eighth, ninth and tenth pages are all impertinent to the point in question, and contain nothing but a vindication of his justly condemned clamour in his former book; concerning which, I will boldly say it, in seventeen points of twenty he is out in his law; if it were convenient to publish the proof on it, I could make it plain. His design is to shew in those pages his wit and fancy, more than candour or law: for my part I am of his friend's mind, that he comes not short of the old observator for managing a dialogue: but all this is not to the purpose, he is not come at it yet, the twelfth page savours of the same kidney, and the thirteenth and fourteenth are no better: there he vents his gall, and that in ribaldry; no softer a name than tools can be afforded to men of worth and honour: if himself be one, as some suppose him, I am sure it is not to the present government; for he plainly condemns it, and declares the people, *i. e.* his sort of them, unsatisfied with it, for its sparingness in vengeance; and it is because others are not punished for maintaining the law, and themselves not preferred for arraigning it: some men know my meaning. He says, he is only for mumbling of judges and council, *causa patet*.

But I must tell him two things, 1. The inclinations of Englishmen, and the laws of the land, will never quadrate with a commonwealth.

2. His supposed criminals do not depend on their number, but the law, which ought and will justify them; if it doth not please, let it be changed by parliament; or if the author thinks that a tedious way, let us burn all our law-books at once, and then perhaps his Remarks and Reply will be thought to be reason, and himself the greatest and only lawyer in the realm; but till then he must give others leave to know, and to say, that they know he is mistaken: for resolutions, and opinions, pursuant and agreeable to the opinions and rules of former ages, I mean frequent and repeated precedents, approved by the lawyers of the age that used them; I say, these will be the law to the end of the world, unless altered by new statutes.

And now we are come to debate the question, all that is past is upon the times, and not the point. In p. 18, is his reasoning part, which is no more than was said before in, &c. To redargue him I must repeat; if therefore he will observe what is said by the sheet, p. 22, I will say no more on it, but submit to the judgment of the reader; he says, the inferences are ridiculous; I say, they are rational and genuine: the single issue is, if his or my friend's arguments are the most logical and natural, let the reader judge.

Now for authority, let us see if he urges any on his side, or answers that on the other. He admires (p. 21) at the assurance of the sheet-author, and others admire at his. He says, the parliament had often adjudged it; but none can shew any judgment in the House of Lords, or vote of the Commons House to that purpose. I have shewn the sense of the present parliament in the point of guards, and his temporary laws are already answered; nor would any man but he, and one more, pretend that they are judgments in the case. Surely it will not be pretended, that his case of the earl of Northumberland, in Hen. 4th's time, is any thing to the purpose. nor is it any argument to say, no king of England was ever killed for want of guards. Now for cases, p. 26, he saith, that in the earl of Essex's case, there was an actual war levied, and that, as I said before, destroys the argument from the different sorts of treason. As to Cardinal Pool's case, he only says, there was another statute in force then, but no record or history says, that he was indicted on any other than the 25 Edw. 3. As to Dr. Story's case, he tells a long tale out of Cambden about the fact, but answers not one word to the indictment; whatsoever the evidence was, the indictment was as the sheet alledges, and that is enough.

His answer to Coleman's case is that, that things happening afterwards proved more, but the evidence was no more than what my friend alledges. As to sir Henry Vane's case, his answer is his own hear-say of what was proved, but the indictment he never perused, argued like a lawyer! as to Constable's case, and the rest, he gives no answer, but only that repetition of a number of cases makes a mutter and a noise, and so it does when they govern and rule the matter in question, and are not answered. Owen's case, he says, the author presses it strangely, and that is all. He says, the cases of Burton, duke of Norfolk, Awater, Heber, and Crohagan, are not to the purpose, let the reader judge if they are not pertinent. As to the opinion of the judges in the lord Stafford's case, he does not mention it, but says, the reviving that case might have been spared, and that is all; a pretty answer! As to Colledge's case, he talks of a proof of a self-defence, but nothing to the point it was urged for. As to the cases of lord Cobham, Grey, and Rawleigh, in 32, 33, 34, 35 Pag. setting aside his scandalous invectives and reflections upon those times, ministers, and governments, he no ways attempts to answer the argument drawn from them, viz. That the charge was the same as in the case in dispute.

Now I appeal to any man of sense and reason, that will read and think closely, if the Repliant hath offered any one argument more than the lord Russell's Case, Defence and Justification had alledged. If he hath shewn any one judgment where such indictment was resolved naught; if he hath given answer to Dr. Story's, Collingborn's, sir William Ashton's, Burdett's, and sir Henry Vane's indictment; in short, if he hath answered any two of the cases cited; or if he hath done any thing but reflect on past and late times, and if the indictment remain not good, both for matter and form.

notwithstanding all these pretended Replies Upon the whole, I desire the reader to peruse the book cited; and to judge if there be not precedents enough unanswerable to justify the indictment in question, and that the recorder gave a good judgment upon the verdict that affirmed its truth; *quod fuit probandum.*

To conclude, since the Repliant is in love with Horace, I would advise him to consider one hint of his,

—Forum, putealque Libonis
Mandabo siccis———Hor.

THE THIRD AND LAST PART OF THE MAGISTRACY AND GOVERNMENT OF ENGLAND VINDICATED, with Reasons for a general Act of Indemnity, &c.

IT hath been the observed misfortune of most mixed governments, particularly of our own, never long to enjoy the intire friendship of all it's individual subjects; the lowermost side hath too frequently acquired the greatest share of the people's love, or at least pity: It is then no point of wonder, that the servants of former crowns should have incurred their proportion of envy, hatred and reproach; and amongst all those none more obnoxious to it, than the ministers, officers, and instruments of justice; for such are the vitiated sentiments of persons interested in all suits, that the vanquished is certainly injured, or thought or said to be so, which is all one, by the persons themselves, their friends, or relatives, their patrons or creatures. In truth there's scarce a trial on the plea or crown side, but one party, and sometimes both, do leave the court with a swinging curse or two on judge, counsel, jury, witnesses, and perhaps all concerned; upon which account, it can never be deemed a justifiable, much less a commendable and meritorious employment, for lawyers to note and report, and afterwards publish to the world, the clamours of such malecontents, with the addition of sarcasm instead of argument, and blushless lies instead of law and precedents, and all this under the pretence of serving their majesties and the government; but it is a mere pretence; for first, it is not their province; these publications are made by them, not as legislators or judges, but as private persons; and one of their Libels seems calculated only for private lucre, as either the hopes of a place, or mere [illegible] of practice, by telling the town, in the first and last pages, where the author lives, of what profession, and how long standing; an art learned from some of those exquisite Doctors inhabiting towards the fields, whose knowledge and conversation is pretended to be in heaven: another writes for bread, and scribbles that he may eat, &c. A third, or rather the first and prime is inspired with venom and revenge, even the pure spirit on it; as one balk'd, he is angry at all; and because some were not his true friends he is resolved to make enemies of those who despise him, and of them the number is great. But secondly,

It is of no use to the present government for truth only can be a sure basis of respect to that; and in case of slander, the filth rebounds, and the dirt thrown most sure turns on, and dawbs their own faces, especially when they arraign those as ignorant, whose learning, knowledge, and judgment are so clear and acknowledged, as to render the censors unworthy even of being their bag-bearers; the like when they censure those as corrupt, who have always boldly done their duty even in their defiance of a court cabal, or a popular faction; who have always adhered to an old English law, and their just opinions in it, though frowns from Whitehall, or clamours from Wapping, though lampoons from Grub street, or a worse usage from an Observator, though a Supersedeas or a Take him, &c. were the only reward they could expect for such their (formerly called puritanical, now arbitrary) justice: gentlemen who never poll the law (which the great and good sir Mat. Hale did truly call robbing the poor of justice) for the acquiring a farm or an office, or a lumping sum for sale of it; who never begged an executorship for to gain a fortune; gentlemen who never gave strained opinions concerning the revenue, when made for their clients the farmers, but clamoured at the same, when used by their king with more moderation; gentlemen who parted with their places, though of honour and profit, rather than comply with a court-opinion or a club-notion, when others (I name nobody) offered entire and everlasting service, if they could have preceded or succeeded them, (Teste, . . . apud St James's, and the city of Gloucester) but missing their aim then, as now they do, their gall must have a vent, and so it hath with a vengeance when a true and bold justice is made the subject on it: the reason is plain, those men's repute is too great for truth, probity, and usefulness: an eclipse is necessary, if possible; for if otherwise, the Defender will never be Keeper, the Remarker Solicitor, nor the Gray's-Inn poet wear scarlet in Wales; their hopes are but small, unless they can postpone all their betters by death, commitments, or that which is but little worse, reproach and slander; but some think their sting grows weak, for it is apparent that there are a sort of men, who though they might and did love his majesty when as prince, yet do not, will not, cannot love him, or any man else, as king; and this is now pretty plain. But thirdly,

The libels are criminal, and injurious to common justice, for they create a disrespect and contempt upon all justiciary proceedings: to

arraign all past is to excite a suspicion of all present and future administrations; whereas Plowden saith, fol. 33. 'It is a good and sure way to believe the last judgment;' and if so, it is plain what name the contrary practice deserves; besides, were it otherwise, the institution of judges and courts are vain, and our state, as Englishmen, the most unfortunate; for we have no rule but 'ex ore judicium,' or from particular statutes, and of them they are the expositors. Now let us inquire which is law, the Defender's fancy in his argument inter S. and B. or the judgment in the exchequer-chamber, affirmed by the lords. If the judicial resolution be so, then the publication of his argument was injudicious, and I am not to follow him as my guide; but perhaps he'll tell me, that manifest reasons and good lawyers ought to govern me; if so, then I ask him, who shall I follow in the E. of D.'s case of a 'capias pro sine puis judgment, &c.' whether the eleven best lawyers, or the vote of the House? If the latter, why not so in the former case? and if otherwise, then his judgment was mistaken; so that 'quacunque via data,' there is no infallibility in this world, and consequently no excuse for private censures of public proceedings in courts of justice: besides, the books are pretty clear, that such things are punishable; but I leave the reader to peruse them at leisure. Then let us consider the confusion that must ensue upon the public countenancing such a practice as these scriblers have introduced; for if allowed on a disbanded judge it is so on a sitting one, for the case is the same in respect of private lawyers, who pretend to think their judgments erroneous or corrupt; but surely both are unlawful. Besides all this in the present case,

They have palpably wrested the law in divers instances: I need name no more than the indictment in question, which that it was legal and good, most men do now agree, especially since the dint of the opposal seems current only on the evidence, with a waiver of the other, and more since that guards are proved lawful, and the Observator concedes it the most legal part of the procedure; and the Justice of Parliaments, &c. supposed written by the Defender, strains all its forces on the evidence and the times: and their follower, the Poet, in his New Nonconformist, pag. 10, runs the same way too: Only,

There remains one objection to the first Vindication, which is, that it affirms, words may be treason within the 25th of Edw. 3, and the Remarker challenges a proof of it, and asks where it may be found; and the Nonconformist quarrels at the lawyer that did assert it, and some others have done the same *ore tenus*.

I confess, that the first sheet did publish the assertion, but waived its eviction, for fear of a strained use of such opinion to ill purposes, for the serving a turn upon particular occasions; nor had there been any more said on it, but that their confidence and malice seems so exorbitant as to extort a check; for the Regulator is grown so confident of his own knowledge, as to undervalue the greatest of judgments; whereas his common-place-book affords us no titles but those of collusion and malice prepense, and his practice hath been much of the same stamp, only that sometimes he hath added a little of the lunatic, as appears by his Rhymes, Prophecies, Dreams, Politics, and other Religionary Works.

To prove the assertion, I depend not on the authority of the sense of the Commons House, 1 Jac. 2, (though let the cryer for justice, or who else pleases contradict it) it was in fact then affirmed and agreed unto, and upon that the then king's council and courtiers desisted the motion and prosecution of a bill to make words, &c. But that is a supernumerary argument, there is more than enough besides.

I am not to maintain, that all rank, malicious and gross words against the king or queen's person are such, nor that whosoever drinks an health to our sovereign lord the people, or to the late king James, is a traitor: but that words significative and expressive of a present intention to do an act to the king's destruction, such words deliberately, maliciously, and advisedly spoken, on purpose to accomplish the demise of the king, as by promise of money, with importunity to commit the fact, may be an overt-fait to prove the imagination within 25 Edw. 3.

To evince this, let us think a little——and it will be plain.

The words of this statute are clear, and of an easy construction, if we will allow those dull old times to speak sense. They are to this effect: that if it shall compass or imagine the death, &c. and 'de ceo provablement soit attaint per overt fait:' now the objection is this that words are not deeds within that clause: to this the answer is very clear; for by all the grammatical and other rules for interpretation of the sense of words, the latter part of a sentence is to be construed (if used by way of opposition) as opposite to the thing mentioned and intended in the foregoing part, and not as opposed to every thing which it may 'ex vi terminí' exclude in other cases; and this is an agreed difference, both amongst divines in exposition of sentences in scripture, and grammarians in almost all cases whatsoever. Now to apply this:

Overt-fait is used not in opposition to words, for there's no such thing mentioned; but it is added in contradistinction to that which was before specified, viz. thoughts, and such are imagination and compassing; and therefore overt-fait must mean any open, manifest thing as can truly discover those thoughts, as may proveably attaint the traitor of such his imagination; and it is a most natural and proper mode of speech, if they did intend, as most undoubtedly they did, that the thought should be the thing prohibited, then 'tis as plain as they intended by the word 'fait' any discovery of such thought by words or actions: and so said Newton in 19 H. 6. That to imagine the death

of the king is treason, though he do no act towards it, if such imagination be disclosed, that it can be tried if he did so think and imagine. If that thoughts and words are mentioned both in a sentence, and afterwards deeds in opposition, then the last will exclude both the former; but here, when used only in contradistinction with thoughts, it seems plainly otherwise. That deed, when used in opposition to thought, doth include both words and acts, none can deny; a thousand instances might be given of it; and in the exactest propriety of speech, words are deeds when as contradistinguished from thoughts; for the soul thinks, even as abstractedly considered from the body, but man never speaks without action and motion: the difference is plain, and needs no explication. But farther:

I would fain know, what is a consult or plot, but the mutual and reciprocal declaration of two or more traitors minds each to the other? Each declares his traitorous imagination by words, and so of an agreement to commit the actual murder, 'tis but a declaration of their minds by words each to the other, only they do happen to agree. Now suppose one man thinks and intends to destroy the king, and by words doth willingly, deliberately, and advisedly declare this to another that is not of his mind, though by mistake is thought to be such, is not this the same thing? If a man traiterously offers and promises to another a thousand pounds to perpetrate the villainous act; if he accept it, and a parole agreement is made between them accordingly, surely the apologists for treason will agree that to be an overt thing, and both guilty, if it can be proved by two witnesses of credit. Suppose then the party offered and promised doth abhor and refuse, will that make a distinction? If it does, 'tis without a difference: perhaps the word 'consult' will be called a new cant; we know whose coin it is, and who gave it the first stamp; 'twas no less a man than sir William Jones, who at the time of such his invention was no prerogative lawyer, though considerably so in times then lately past: nor is it imaginable what is the meaning of a conspiracy or plot to take away the king's life, but a communication by words between several traitors concerning such act, and the methods of its accomplishment, and a declaration by words of each man's being fixed in that purpose; which, if it be proved by sufficient testimony, will undoubtedly be an evidence of a compassing, &c. which is the treason prohibited and punishable; nor can the meeting make it more so; for they could not discourse unless they met; and therefore 'tis the words only that are the manifest overt-fait. Nor doth Hugh Pyne's case or the resolution of the judges therein, contradict this, notwithstanding the confidence of the Remarker, that it did; they only say, that the words in that case were not treason, that those words were not an evidence of compassing, that for those words he could not be indicted upon that statute; but their opinion doth plainly imply, that had the words been evidence of a compassing, &c. as they were only slanderous and reflective, it had been otherwise; and the instances therein mentioned are full to this, as John Quick's indictment was only for words to king Henry, unless standing up and speaking will alter the case: Thomas Kover's, John Clipsham's and John Murfield's, are all for words, and some others there specified. Besides it is observable, that in most indictments on this statute, some words have been alledged in them as an over-fait, to demonstrate the imagination, which would be impertinent, if the law were thought otherwise. I will not insist on Colledge's, because the case hath been cavilled at, though with no colour as to the indictment: part of Patrick Harding's indictment was *loquendo publicavit*; but I'll not dwell on that, because foolishly drawn; but Arthur Croghagun's case in Cro. Car. is pretty full, and for words; and the words of the book are, That the traiterous intent and imagination of his heart was declared by his words, and therefore held high treason within the express provision of 25 Edw. 3, and upon his coming into England he was arrested, &c. Now no answer can be to this, but that he came into England; but the words only shewed his intent, and by that book the words are alledged as the overt-fait; besides the case of Blanchflower and Atwood, Mich. 5 Jac. 1, B. R. in Yelverton's Reports 107, per curiam, resolved that words may be treason, and that is an express resolution; for there was then no temporary law in being concerning parole treasons, that I know of. The case of Bersford and Presse, Hill. 8 Jac. 1. B. R. Yelvert. 197, adjudged, That treason may be committed by speech as well as by act, for any thing which discovers the mind of a man to be traitorous to his sovereign, is capital to the party: Hitcham ad Brook Pasch. 1 Car. 1. Hutt. 75. held per cur. That the speaking of treason was treason, and that 'sermo est index animi,' as well as preaching or writing; and no man can doubt but those are acts, and speech is as much so.

Besides, if the consequence of the contrary doctrine be well considered, 'twill appear to be a plain evasion of the statute of 25 Edw. 3, as is manifest upon the reading it: and the common books are full of this; for otherwise no action could lie for saying a man hath spoke treason. But here's enough said to answer the challenge, Where's the authority for such an assertion? Though infinitely more might be said for it; nay, it is as easy to dumb found the contrary, as 'tis to transcribe law cases. If this doth not give them satisfaction, they shall remain unsatisfied for me, I'll plague the world no more with writing on this dull, flat, unprofitable subject, crown law, lest I should provoke our new scriblers to double the plague by their replies: if they attempt an answer, I'll leave the tobacconist and grocer to confute them: and unless a trunk or band-box chance to bring them to my view, I'll never be tempted to read them; and of this they may assure themselves, I say

it to compliment the reader with patience to peruse the rest of the sheet, being ascertained never to hear more on't, at least not from this hand.

Some perhaps may wonder at the reason of the publication of these sheets, and conceive them the product of malice on one side, as those virulent pamphlets are on the other: to solve that scruple, I need only repeat the reasons alledged in the first; but a repetition is damnably dull, as well as tedious and irksome: I'll therefore add a new one, and that's to shew the reasonableness as well as the necessity of a general, indefinite, speedy act of oblivion; for though the blood-hounds fret, and huff, and bounce, as if all their madness and rage were founded on a true basis; yet 'tis apparent from the premises, that their foundation is false, and the law is direct and plain in their teeth, and doth and will justify in most of the particulars, at which they foam their curses and execrations. Reason therefore, as well as necessity, injoins a silence as to what is past, for otherwise the kingdom can never have its desired satisfaction: for in points justifiable, or at least doubtful, the justice of inflicting punishments can never be vindicated. Did I call them punishments? I beg the reader's pardon for the impropriety; however I'll not name their proper term, but with calmness endeavour to evince three things.

1. That it would be grateful to the nation in general, and every good man in particular. 2. Conducing to the settlement and interest of the present government. And lastly, That 'tis consistent with, and promotive of, the highest and truest justice.

First, the nation did and doth expect it, for revenge is never natural but when freshly pursued, and time wears off the sense of injuries, by the intervention of new ones either real or imaginary, which is all one as to this purpose: The horror of any crime, or at least the detestation of the criminal, grows faint and languid upon the removal of the object, especially if time interposes with the accession of present fears, which at present do more affect us than greater, if more distant. It can never therefore be thought the desire of the people of England, to have their neighbours or acquaintance harrassed and persecuted by fines, confiscations, imprisonments, marks of disgrace, or the like, for actions done in the last or former reigns, about which the world hath been so much divided, if lawful or not: Besides, that this was the general expectation of the kingdom on the new settlement, or at least the coronation, of which nature there never was an instance before this without an act of grace; and it is most plain, that none are adversaries to it, but the republicans and the Jacobites, not for that they need it not, as I shall shew anon, but for different ends; each drives at and wishes a change, it matters not to what; for if to the latter, the other hopes a commonwealth will be the more desirable: If the republican succeeds, then the other believes a restoration the more easy; but both dislike the present, and therefore dread a settlement, and consequently dread the people's satisfaction and quiet under their majesties, and consequently dread an act of indemnity: It is true, the cry for vengeance is loud, but it is only from these two corners; which leads to the second particular, that,

It will establish and promote the interest of the present government; While the popular bully is full of damme's and menaces, there is certainly danger, and where there is danger, there is fear; now fear causes an aversion, and aversion begets hatred; and the object of it is that from whence the supposed danger arises, which is from the government irritated by the venom and fury of those hot-headed animals: Whatsoever hath power and will to hurt me, must and will be abhorred; and though none are immediate actual patients, yet the being possibly obnoxious to it, and the want of security for the contrary, doth of necessity cool their respect to the present power, under which they are not safe; and this tempts them and their friends upon contrivances and attempts of danger, both to themselves and the public; and danger by the attempt is no discouragement where the like danger attends their forbearance: and this is of weight, unless Cromwell's politics be thought christian, to cherish and promote a plot, as of advantage to settlement, if reasonably discovered, and subtilly managed; but however it is as true, that enemies who are desperate, ought never to be thought inconsiderable; for they may shake and batter what they can't destroy, they may do mischief, though they can't work ruin, to their adversaries; upon which account, the temptation of continual impending danger is fit to be removed. Besides,

The want of security, and the fear of danger, making men uneasy in their thoughts, replenishes them with complaints and murmurs at every aukward action, or supposed miscarriage, of the government feared; it makes them mutineers at public taxes and impositions, partly because they think it strengthens and increases the power of hurting them, and partly because it sponges and bleeds them of that, which they fear an occasion of themselves to bribe black-rods, serjeants at arms, and other gaolers with; and in a conjuncture when extraordinary aids are indispensably requisite, no temptation to complaint is deserving of countenance; besides, that it cramps trade, and discourages projects for public good, &c. But farther, it is the living, not the dead, the happy, contented, and chearful, and free, not the oppressed, miserable, forlorn, or imprisoned subject, that doth service to the crown and the public.

It hinders all such as are thought to be so obnoxious from any bold essays for the use of the present government; for that if success be the attendant of such their attempt, they continue unsafe notwithstanding; for no man will adventure an hazard to secure that authority, which he is not sure will make him safe, if he doth undertake the present adventure. and

escapes that danger, and performs the service; so that self-preservation renders it their policy to unhinge themselves from, or to be shy of the present power; of which a considerable number might prove useful friends, which are now neuters at least, if not enemies.

It is observable in all foreign policies, either to work a total extirpation of the whole party, or an universal indemnity, after so grand a revolution as this was; the former is not to be practised here, for two reasons: 1. Because we want people: 2. Many of our friends must be banished too, for divers of the supposed criminals were instrumental to the present change, &c. Ergo the latter only is, and can be most advisable; for once I will suppose their number but small, in comparison to the saints and innocents (if any such there are in the nation); yet under our present circumstances, all are to be obliged as friends that possibly may; but if the thirteen heads, with the surrenderers clause and all its and their subdivisions had been reduced into a law, in the designed act of attainder, one third at least of the nation had been involved, who, with their disobliged relatives and dependants, is not so contemptible a flock, though but of sheep for the slaughter. Besides,

It is impolitic, as well as unjust, to deny or delay it to those who have submitted to the government, yielded it obedience, and quietly bore its public charges according to their proportion, and yet give a free, full, and general pardon both in Scotland and Ireland, to all that took up arms, for all their sins then past and present: It provokes the former to repent the non-concurrence with the latter, for it was but resuming their quiet and submission at pleasure, and then they were safe, which now they are not, but under continued menaces and dangers of both, as appears in their being baited by every barking cur, that can but write with gall in his ink, or speak with a damme in his mouth.

Experience farther tells us, that nothing turns or changes the humour of the English commoner, like rage, insolence, and cruelty in their fellow subjects, when made superiors, and such is raking into old sores thought to be; it matters not whether justly or no as to this purpose, the effect is generally such: The Star-chamber in Car. 1. his time, the Major-generals in Cromwell's: The Tophamizing of abhorrers in Car. 2. his time: The western campaign, and the other criminal prosecutions in the beginning of Jac. 2. I say, all the violences used in these several periods (and yet they have their respective provocations) did most notoriously alter the kidney of the Commons, and made even their once beloved first dreadful and terrible, then odious and loathsome; they produced considerable changes in their several consequences: I could come nearer home, even to the teazing of Moor and North, and other citizens of London, which first turned the stomach of that city, as is now apparent; but *sat verbum*, &c. But farther,

The want of this renders both the policy and honour of the great bellowers for vengeance to be justly suspected: 1. Their honour in taking care of their own servants, for all their excesses upon the Revolution, and opposing the indemnity of all others, as by the act appears. 2. Their policy; for that it is observable in story, that the association in queen Elizabeth's time, was under a protestant prince for the protestant religion, and no ill success attended it, yet those wise ancestors of ours thought fit to secure themselves, by turning the association into a law, and a general act of indemnity; I do not say they needed it, but the associators in that reign thought it needful; and it is very considerable, that in no reign was there more peace and quiet than in her's, and in none were there ever more free and general pardons: and in truth the latter was the occasion of the former; for when men are once safe and quiet, no small temptations will provoke any more adventurers, though they like another better, yet men being easy are generally contented. There was one free and general pardon of the queen's at first confirmed, 5 Eliz. cap. 11. another 8 Eliz. cap. 18. 13 Eliz. cap. 28. 18 Eliz. cap. 24. 23 Eliz. cap. 16. 27 Eliz. cap. 30. 29 Eliz. cap. 9. 31 Eliz. cap. 16. 35 Eliz. cap. 14. 39 Eliz. cap. 28. 43 Eliz. cap. 19. Eleven in number, and never five years without a parliament pardon, and this made parliaments and crowns the darlings and desire of the people. Besides, it is the interest of each party amongst us, though some do not see it; the Whig ought to promote it for two reasons: 1. Lest being the lesser part he chance to feel the want of it, and for that he hath given some provocation. 2. That if it be the greater, the memory of his vengeance and fury may be forgotten, and himself restored to the good opinion of the rest of mankind, by one act at least of good nature: The Tory ought to pursue the same measures, and much for the same reasons, for his top-gallantry hath been, and if re-practised will be again as odious and loathsome to the moderate and good, as ever it was, or as the others could be. Temper therefore is now the game, and a veil over all that is past is certainly the most politic, especially considering the multitude of the supposed criminals, and the justice of their several excuses, which comes next. For,

Lastly, It is consistent with, and promotive of the true and highest justice; for in most of the cases the law was doubtful, and to punish opinion in matter of law is as unjust, as to persecute mistakes in matters of religion is unchristian; and new laws for government *de futuro* are more agreeable to natural equity, than a retrospective fury; that it was doubtful, is plain, the modern scriblers have sufficiently proved it. In two of the cases cited they differ themselves; for Dr. Story's Case, the Defender cries, it is not law, the Remarker agrees it is, and that he was well hanged; for Plunket's Case, the Defender cries, he was well hanged, for there was treason enough in his

charge, the Remarker insinuates as if he suffered hardly; now, what shall a little lawyer believe between these two great bodies of learning? The like may be said of Soame's Case, and the other above mentioned. But what is more: In the voluminous argument against the dispensing power, owned by sir R. A. he doth concede, that there are some prerogatives so personally and inseparably inherent in the crown, that no act of parliament can cramp or diminish, or at least take away; and that being granted, I am sure all that the rest of the book says can never make that a plain case, and in truth his own argument shews and leaves it a disputable point; and if that were doubtful, every particular else may well be buried in oblivion; besides, in cases of construction, the nature of the thing admits of no doubt, and then there is no colour for punishment. Besides,

In respect of inferior persons, by our constitution, they are obliged to submit to and follow Westminster-hall, which is the *Lex loquens Angliæ*, and when all these things are duly considered, there will remain but few grand execrable criminals, who were fit to be made examples of, only to tickle some, aggrieve others, and terrify none; for that will be the consequence; for that is the case of all violence, where the justice of the thing is not clear and undoubted. Then for exceptions;

Let us think a little: Is it reasonable that some should suffer for not being afraid of punishments never declared or promulgated, and others should escape, because their countenances are more fawning, or that by consent their relations have played on the other side, or that their swinging fortunes enable them to scatter mice for their personal indemnity, or that they have had the lucky principle of being faithful to all changes, and true to nothing else, or that they have been forward to subvert their old master, after their fire and folly had ruined him, and endangered themselves? These and such-like are no pleas for justice, and yet this is the case. Farther,

The drift is to magnify and aggrandize punishments by bill. which by the standing laws and common justice of the realm could not be inflicted; and they urge two reasons for it: 1. Their particular pardons will otherwise excuse them. To that I answer, either they are valid in law, or not; if not, there is no need of bills; if they are valid in law, the same law and justice of the land injoin their allowance; even the same law by which the country-man plows his land, the gentleman receives his rent, the trader recovers his debt, and the senator sits in the house; and by the same reason that these enjoy their properties, the criminal ought to have his pardon allowed, for one is a right accrued by the law, as well as the other. 2. The common channel is too smooth; severity is sometimes necessary, and that now, if ever; and therefore the legislative authority ought to exert its power, and punish according to demerit. To answer that, I say, either they are no offences by law, and there needs a bill to make them such, and inflict evils upon them as such; or else they are offences, but deserve a greater punishment than a common court may pronounce: Now, if the first be the case, then I am sure it is rank, palpable, tyrannical injustice, and that is the plague of living under an arbitrary power, for none can know what is not criminal: If they mean the latter, as I suppose they do, then I ask, to what end were punishments invented in societies, but to restrain men from doing particular actions, through the power and influence of fear? And how could that consequence be expected, when the penalty was never known before it is inflicted? And to inflict an evil afterwards, which was not known before, is to make a man suffer that which he could not fear, because he could not know it, and this because he did not fear it: And the justice of that is plain too.

I agree with the satirists, that there are some precedents of this last method of proceeding, but most of them are repealed; I will name two that are so, the earl of Strafford's, which the very law itself did injoin posterity not to observe, or follow, or do the like. I cannot forget one expression of his, to this effect, upon the trial: If there be an error in a judge, so that he give a sentence otherwise than a man of better understanding conceives reason for, there is no cause the offence should be heightened, because he was not so wise a man as he might have been, nor so understanding as another; which if allowed, will make it more eligible to follow a plow than serve a government, to dig in a ditch than bear an office; for all men stand obnoxious to the constructions and passions of succeeding times. There is one instance more, and that was sir Thomas Haxey's, who was attainted for treason, for bringing in a bill into the commons house against the prerogative, though while and as a member: I suppose the sparks will not much applaud the justice of that procedure for their own sakes; but, as I said before, that, and most others of their precedents, were repealed, when a cooler assembly met upon the next session, and so was Haxey's, in 1 Hen. 4. Cott. Abr. Rec. 362, 363.

But if vengeance be requisite, it ought to be without respect of persons, the justice of it ought to be impartial, true, and catholic: And then come in the pensioners and surrenderers, the regulators and promisers, the old high commissioners, and the new creed-makers, &c. and, God knows, *quis non*, &c. To conclude, our Saviour's rule, if observed, will be the most infallible indemnity that can be contrived, and that is, John viii. 7. Let him that is without sin amongst you, cast the first stone. And in truth a censor of the manners of others ought himself to be pure, clean, and innocent, *in omni re quacunque*; and if there be no danger but from such, I am sure there is no danger at all, and that it should be so, is the truest justice in the world, *quod fuit probandum*.

I will not mention the argument from the

vacancy, that the government was dissolved, every thing reduced into its primitive state of nature, all power devolved into individuals, and the particulars only to provide for themselves by a new contract; for if so, there is yet no new consent for punishment of acts done before the dissolution, and consequently revenge for that is at an end; indemnity therefore ought to be promoted by those who made that vote for otherwise their truth may be suspected, &c.

The Lord RUSSELL'S INNOCENCY further defended; in answer to The Magistracy and Government of England vindicated.

THERE is a pamphlet very lately published which stiles itself, The Magistracy and Government of England vindicated.

It appears by the following part of the title, to be no less than a justification of the proceedings against criminals; impudently declaring, in plain and express words, as also by all his subsequent discourse, That by the Criminal he means the late lord Russell, pag. 2. column 2. in the middle of it.

And the author does professedly own, that the book is written by way of answer to a small discourse or argument lately printed, which bears the title of 'A Defence of the late 'Lord Russell's Innocency.'

It argues a transcendant boldness in this answerer to call this noble lord a Criminal, and to justify those proceedings against him which all honest men ever accounted no less than murder under a pretence and colour of a legal proceeding, and to presume to publish such a discourse as this, after the king and the two Houses of Parliament have, by the most solemn judgment that can be given, pronounced that noble lord to have been innocent; and thereby have done so great right to his memory, and that with so high a zeal, and so mighty a concernment for him, as the like cannot be shewn in former precedents.

It is most evident, that the author was composing this scandalous libel even when he very well knew the bill was brought down from the lords to the commons, for reversing this noble lord's attainder, and the author could not but observe with what zeal and affection the bill was entertained at its first entrance into that house.

The author, by endeavouring to conceal himself, is from thence, as he plainly professes, encouraged to take the more liberty to lay about him in the dark, (as he fancies) and thinks to escape unseen; and not only strikes at the author of the lord Russell's Defence, but, as far as in him lies, wounds that noble lord in his honour, whose justification and defence was so undertaken, and labours to overthrow that right and justice that hath been done by the supreme authority of the nation.

This is no way agreeable to a noble and generous soul, to come behind a man and strike him; it rather follows the example of that devilish Powder-Plot, to destroy and blow up the king, and both Houses, and to do it in such a close and clandestine way, as it should not be known who hurt them: for he was too much a coward to set his name to it.

But it is very easy to tell you what are the first letters of this author's name without casting of a figure. His argument in law plainly speaks his profession, and what robe he wears; and his stile and phrase of speaking having appeared in so many noted trials, as do in so many visible and legible characters disclose the author; sir R. S. does under his hand readily and utterly disclaim it, and is heartily believed in what he says.

This slanderous author acknowledges, that upon the lord Russell's trial, some blamed the jury, most censured the witnesses, but very few arraigned the counsel or court. Here it evidently appears how our author is concerned, first for the counsel, and then the court; and self hath the preference, though it be here with a breach of good manners to name the counsel before the court.

Page 1. He takes it heinously that any gentleman of the long robe should appear in print to ridicule their own profession? this grossly speaks our author one that was of counsel in the trial. *Et tu Brute?*

If it had been an open enemy, a doctor of the commons exercising his wit and raillery on the common law proceeding, then (as he expresses himself) this author could have borne it; but he did not imagine that satires and invectives upon past proceedings should be writ by lawyers.

In reply to which it may be justly said, That when lawyers will make use of their wit and rhetoric, as this Answerer has done to bolster up an unjust and revengeful proceeding, and out of ambitious designs, to get or continue in favour, and to gain greater preferment, or shew their parts, will engage in causes of blood, and help to destroy the innocent, and be instrumental in subverting the laws and government, it is every lawyer's duty, as far as in him lies, to vindicate the profession, by utterly disclaiming and abhorring all such practices: and the Defender can appeal to all that have known his conversation for above these forty years and under, whether ever he used any such pitiful, mean and ungenerous arts and methods, better becoming the stage than a court of justice; and whether he did not, when it was in his power, constantly restrain and condemn that scandalous and disgraceful way of practice. And he can as freely appeal to all that will be at the pains to read his printed Argume t, (which this concealed author so unjustly censures) whether any such bitter reviling and revengeful humour appears in any part of what he so published, or the least reflecting on any particular person, but only in the general, and no further than

the mere justice of the cause did extort from him; so far was he from this author's scurrilous and rude course of reflecting upon any person's private conversation; but some men's faculties lie this way, and they are very well known, though after such manifest and gross provocations, that have been given by this author, and such public and scandalous actings of his in the eye of the world, it might justly be said with the poet:

'Difficile est Satiras non scribere.

The author of this Answer, in his first paragraph, would have the world believe, that he writes upon no other design than to support Magistracy, and the government; a noble theme! (as he terms it). Every man knows what sort of government he laboured to support but the other day, and how far he was instrumental in it; but it is rather thought fit to leave him to a general act of indemnity and oblivion, than take any revenge upon him

He seems to allow the lord Russell's defender in his fourth paragraph, to be an author of age, experience, figure and learning (but he will not say candour or honesty). Thus he writes.

The lord Russell's defender is very glad he hath so little of this adversary's commendation, for it would gain but small esteem amongst men of true worth, to be commended by him. It might be said to him, with the philosopher upon the like occasion, being commended by an infamous person, What ill have I done, that thou shouldest thus commend me? Yet that candour and honesty, which he covertly refuses to allow, is that which the lord Russell's defender prefers before all this Answerer's mercenary wit and rhetoric

In his fifth paragraph he judges the lord Russell very unfortunate to fall under the accusation of treason; and says, that noble lord was most pitied of any under those circumstances.

Reply.—That noble lord's misfortune (among other things) was his falling under the lash of so bitter and sharp a tongue as your's, who, however, you seem now to mention that lord with pity, had then no pity for him, but used him with severity, as may appear by your own printed narrative of that trial, and your rhetorical flourishes in a case of innocent blood, which contributed in a high degree to inveigle the jury, and bring that noble lord to the scaffold.

He confidently says in the same paragraph that in truth the fairness and indifferency of that trial was such, that his own relations were pleased.

Reply.—How untrue this is, in both the parts of it, that the trial was very fair and indifferent, and that his nearest relations were highly exasperated and offended, shall appear before we part.

In the sixth paragraph of his sheet, he complains, that the memory of that unfortunate gentleman was revived by the publication of the defence of his innocency.*

Why, what hurt in the reviving of his memory? His memory is precious, he died a martyr for his religion, and for the rights and liberties of his country, and fell a sacrifice under cruel and merciless hands.

It is indeed this Answerer's conscience that flies in his face; the reviving of this noble lord's memory speaks terror and amazements to the Answerer. Thus did bloody Herod, when he heard of the fame of Jesus, he presently cries out, This is John whom I beheaded.

He does prepare himself to make use of indecent or disrespectful language, (as himself expresses it) and comforts himself with the thought, that his name shall not be known. A pitiful and unmanly dealing, not becoming a person pretending to ingenuity. The lord Russell's defender dealt otherwise, and owns his name, and will let the world know what this Answerer is.

In the four next ensuing paragraphs, he is much to seek for what end and purpose the lord Russell's defence was printed in that pamphlet (as his wonted rhetoric thinks fit to call it).

It could not be (as he most contemptuously says) for consumption of paper.

Nor for the bookseller's profit, for a reason to be guessed at.

Forbear, for shame, to use these sly and silly intimations; they are fitter for schoolboys, or the mountebank's stage, or for Billingsgate, than for a man of your figure; one may be ashamed to have any dispute with such an empirick, or rather a jesting and jeering Merry Andrew. Pray keep this sport for the next Bartholomew Fair, and learn more gravity and civility.

It could not be (as he farther proceeds upon the same inquiry) for the sake of the lord Russell's memory, or any of his surviving relations; for what was written in the lord Russell's defence, is (says he) but a painting to the life the too deep concern of that noble lord, in a weak as well as criminal enterprize.

This is wonderful boldness and daring in this Answerer, still to pronounce him a criminal, (that noble lord) whom the supreme power of the nation, and the highest judicature and authority, have adjudged innocent. And yet he has the impudence to intitle his undutiful pamphlet, The Magistracy and Government of England vindicated · and to publish this, after he, as well as any man, knew that the act of parliament had passed, asserting the innocency of that noble lord, and the barbarity and injustice of the proceedings against him: wherein this Answerer had so great an hand, and so bitter and sharp a tongue.

One would think, that an ordinary wit might have served to put him in mind, that as yet there is no act of general pardon and indemnity passed: and who knows upon whom the great exception may light?

But he gives a very just occasion to the lord Russell's defender, to let the world know for what end and purpose he long since writ,

and so lately printed, so despised a pamphlet; by which, even his adversary may be convinced it was not merely for consumption of paper, or for the bookseller's profit, but truly for the sake of that lord's memory, in asserting his innocency, and at the desire, and for the sake of his surviving relations. And for the truth of what is thus affirmed, he does appeal to those noble relations of his who are yet alive.

While that noble lord was upon his trial, or very soon after, there came a letter to his defender's hand, who was then in the country, near eighty miles from London, and this from a person of great honour, and one of the nearest relations to that noble lord, requesting the author of his defence to afford the best advice he could; and accordingly he heartily and freely gave it: much of which does appear by what is printed by him.

This was not the only letter he received from that lord's great relations upon that sad occasion: but after that bloody stroke had been given, a paper was published, as the speech intended by that dying lord.

In answer to which, the now Answerer and adversary (as is too evident) did publish his first pamphlet, intitled, An Antidote against Poison, composed (to use his own words) of some remarks upon the paper printed by the direction of the lady Russell, and mentioned to have been delivered by the lord Russell to the sheriffs at the place of the execution. Thus far of the title of that pretended Antidote.

In the latter end of his second page, that which is mentioned in the discourse out of his pamphlet called the *Antidote*, and which is barely repeated in order to be answered and confuted, he grossly mistakes in this latter pamphlet, and falsely affirms, it is admitted to be true; and from thence endeavours to have the lord Russell's defender understood as arguing against the lord Russell, and acknowledging his guilt: which is a very unworthy way of dealing by this pretended Answerer, but easily discerned by any wary and intelligent reader. Nay, this Answerer himself immediately after, before he is aware, clears the lord Russell's defender again from the imputation by taking notice, that the defender of the lord Russell endeavours to invalidate the credibility of the evidence given against the lord Russell.

This Reply declines the taking notice of many of this Answerer's paragraphs, that are spent merely in vilifying the lord Russell's defender, it being obvious, that they were intended only to render mean and contemptible the person he undertakes to answer; it being beneath this Reply to repeat them, and to follow the Answerer in his rude and scurrilous way of writing.

It was indeed no secret to the learned, that a variance between the indictment and the evidence might be alledged on the general issue; nor that Treason, and the Misprision of it, are different crimes; nor that proofs of treason must not be by hearsay nor argument only; nor that less than two witnesses are not to be allowed for proof of that crime; nor that the witnesses ought to be credible: but these are not so generally known to such as are not professed lawyers, and may be usefully remembered to such as are brought upon their trials for their lives, and are denied the help of counsel when they most need it, and are apt to be more under a consternation, when they are beset with such sad apprehensions of their danger, and baited at by a multitude of crafty wits, and such as abuse their parts and eloquence to destroy the innocent, and the court (it may be) not always so indifferent as they should be. And these useful and well-intended assistances, as are ordinary and useless, as the pretended Answerer would represent them, were very thankfully entertained, and made use of by several persons of great abilities, and of the best quality, who afterwards fell under the like cruel and malicious prosecution; but they were no professed lawyers. And most of these are still living, and will and do testify the truth hereof.

The Answerer, in his fourth page, falls to argue the points in law upon the great head and title of treason.

This Reply forbears to repeat what the Answerer says upon this subject, or to repeat what this Repliant has formerly printed, but therein refers himself to what is so printed.

Only finds it necessary to state the point in question in as few and plain words as he can, and leave it to any impartial reader to judge of it.

The great statute of treason, viz. that of the 25th of Edw. 3. was the only statute upon which the lord Russell was indicted; and this is acknowledged and professed by the attorney general, as appears by the printed narrative of the trial, and he could best know his own meaning.

They could not proceed against the lord Russell upon the late statute of treasons, made in the 13th of Car. 2. for that statute limits the prosecution to a certain time after the treason committed, which was elapsed in the lord Russell's case.

Now the statute of 25 Edw. 3. does specify and enumerate the several and particular heads, and sorts or species of treason, that might be proceeded upon, and tried and adjudged, in the ordinary courts, viz. in the King's-bench, or judges of Oyer and Terminer, or gaol-delivery: such as that of Newgate, or the sessions for gaol delivery at the Old Bailey, where the noble lord Russell was brought to his trial.

The scope and drift of that statute of 25 Edw. 3. (as appears by the preamble) was to confine those arbitrary courts, and the ordinary judges, to plain manifest rules, what they should adjudge treason, and what not, it being of so great concernment to the lives of men; and not to allow the judges or lawyers a latitude or liberty to make what they thought fit to be treason; or to exercise the tongues and unruly noise of lawyers in a matter of that moment. And that statute of 25 Edw. 3. being in its nature a confining, restraining, an explanatory law,

ought therefore not to be largely extended or improved, and stretched beyond the plain words, and apparent sense of them.

Now among other several species, or heads, or sorts of treason, particularly enumerated by that statute, there are these two, pertinent to our case; viz.

1. Compassing or imagining the death of the king.

2. Levying war against the king.

Whereupon the common reader (for whose satisfaction this is written) may easily observe this distinction, that the first of these is treason, (in the very imagining or conspiring) though the king's death do not ensue.

But the latter is not treason in the conspiring and imagining, but the treason must be in the actual levying of war.

So that barely to consult, conspire, or imagine to levy war, though there be never so plain nor so open or overt an act of such consulting, or conspiring, or imagining of it, will not amount to this species or sort of treason, upon this statute of 25 Edw. 3, which is the only statute upon which the lord Russell was concerned.

For that statute of 25 Edw. 3. did not intend to make it treason, to consult or conspire to levy war, without the actual levying of war.

This will not be denied nor disputed by the lord Russell's adversaries, nor by this Answerer.

But, perfectly to evade this statute, and the manifest intent and meaning of it, they insist,

That though conspiring to levy war be not treason within the statute of 25 Edw 3, yet to conspire, consult, agree, or conclude, to stir up, or raise, or move insurrection, and rebellion against the king, and to consult or conspire to seize the king's guards, (which signify one and the same thing with consulting or conspiring to levy war) these (say they) may be an open or overt act, to prove a consulting or conspiring to kill the king. What is this but to confound the several and distinct sorts and species of treason, which the statute of 25 Edw. 3. doth so carefully and industriously labour to distinguish?

And what is this, but to make a bare conspiring and consulting to levy war, without an actual levying of it, to be treason within this statute of Edw. 3. which plainly this statute would not have to be so taken? And so the good design and scope of the statute, the security of men's lives, is wholly overthrown by this artifice; and what shall be taken to be treason, and what not, will be still as uncertain as it was before the making of that act of 25 Edw. 3.

And it was then a needless idle thing in those that made the statute of 13 Car. 2, and so of former statutes, to make the conspiring to levy war to be treason; for by this practice and construction it is already made so to their hands, by 25 Edw. 3.

Now the lord Russell was indicted for conspiring to kill king Charles 2, and the overt or open act, alledged to shew and signify it, is nothing but his consulting and conspiring to raise and stir up insurrection and rebellion, and consulting to seize the king's guards, (though they were not actually done) which are just the same thing with conspiring to levy war; which plainly is no treason within the statute of 25 Edw. 3, and therefore most clearly the lord Russell was not guilty within that statute, upon that indictment and evidence.

Since the lord Russell's defender has composed this short state of his case, upon this great point, there hath come to his hands a printed half-sheet, which has excellently well done the same work, which, had it been but a few hours sooner, had saved the labour of this part of the present discourse and argument: this half-sheet is justly intituled, 'A Justification of the late act of parliament, for the reversing the judgment against the lord Russell.'

There is but one point more to speak to, and then the lord Russell's defender will bid his Answerer and Reader adieu: and it is that point which the Answerer's first print, viz. his Antidote against Poison, did not mention, and so no occasion was given them to consider of it; but it is largely debated by court and council, at the lord Russell's trial; yet being then but suddenly started, though it were well argued by the lord Russell's council assigned, no authorities however were then cited (though called for by the Court) to justify and make good the arguments and reasons urged by the council; and it is a point in law, which the act of reversing the judgment against the lord Russell is principally, and in the first place, grounded upon, viz. That there had been an undue and illegal return of jurors to try that noble lord, (too often practised of late) and that the noble lord was refused this lawful challenge to them for want of freehold. The truth of this, as to matter of fact, doth evidently appear by the large narrative of the trial, printed by that lord's adversaries; and this is not in the least touched upon by the printed half-sheet, styled, A Justification of the Act for Reversal of the Judgment against that lord.

That point in law now only remains to be spoken to, viz. That in all cases of the trial of a man, especially in a trial for his life, the jurors ought to be freeholders, even at the common law, and before the statute of 2 H. 5, cap 3, and that not only in trials within the city of London (as the lord Russell's was) but in all other cities or towns corporate, where there was a jurisdiction of trying for life in cases criminal.

It was not material at the common law, how much, or of what yearly value, that freehold was, or is to be; but some freehold (though never so small) the jurors ought to have, or else it was a just cause of challenge.

It was indeed the statute of 2 H. 5, c. 3, that first fixed the yearly value of the freehold, and required it should be of 40s. per annum, which 40s. per annum was then in that king's

reign (being so long since) equivalent to a much higher value now.

And therefore the books and authorities that speak of freeholds of a less value than 40*s.* per annum, must of necessity be understood not to speak of cases within that statute, but of cases at the common law.

3 H. 4, fol. 4, b. Roll's abridgment, title-trial, fol. 648. It is there held, that freehold of any value was sufficient for a juror. This proves that freehold is requisite, and that was so before the statute of 2 H. 5, it being in the reign of king Henry 5's father; and with this agrees Kelloway, fol. 46, towards the end.

Some other cases, after the time of king Henry 5, prove the same, as 16 Edw. 4, fol. 8, half an acre of land, so it be within the hundred, says that book, is sufficient; and it is well known, that as to this qualification of having freehold, the same rule governs in the rest of the jurors, as in those of the hundred, 10 H. 6, Brooke's abridgment, Challenge 192. Hale's Pleas of the Crown, 260.

Nor do these authorities distinguish, at all, between cases criminal and civil, nor in cases criminal between that of treason and in cases less criminal.

This being so at the common law, and the statute of 2 H. 5, c. 3, only adding the yearly value, viz. 40*s.* per annum freehold, which before at the common law might be of any lower value: now, though that statute of 2 H. 5. be repealed, as to trials in treasons, as in truth it is, by the latter statute of 2 and 3 of Philip and Mary, cap. 10, which enacts that all trials in treason shall be according to the course of the common law; the result is, that still there must be freeholders to try, though they may be freeholders, as at the common law, of any yearly value whatsoever.

That the statute of 2 H. 5, (while it was in force) did extend to cases of treason, though treason was not expressly mentioned in it, and the statute speaks very ambiguously and obscurely) appears by the authorities following, viz. Staunf. Pl. of the Cr. 161; and 'Poulton de Pace Regis et Regni,' 187; and by the statute of 33 H. 8. c. 23, in the Proviso, that reserves to the party the challenge, for want of 40*s.* freehold, even in case of treason, though it makes the treason triable in any county.

See sir Christopher Blunt's case, justice Croke, 37 Eliz. fol. 413. In an information of intrusion, by the queen; a juror was challenged for want of freehold, and upon examination of the juror, it appeared he had freehold of 15*s.* per annum value, and that was adjudged sufficient; which admits it had been a good cause of challenge, had there been no freehold at all; and it necessarily implies, that it was required by the common law for no statute interposed as to any lower value than 40*s* per annum. Nor does this case distinguish between the case of intrusion upon the queen, and any other case.

But it may reasonably be argued, if freehold be necessary in a juror, who is to try a case of intrusion only *à fortiori*, it is requisite in a case of high treason; but in that case of sir Christopher Blunt, another juror was challenged that had no freehold, and he was therefore set aside.

Now that the challenge, for want of freehold, extends to the city of London, and other cities and boroughs, as well as to the counties, is abundantly proved by the statutes of 11 H. 6, c. 1, 7 H. 7, c. 5, and 23 H. 8, c. 13, to which the reader, for brevity's sake, is referred.

It is no-where maintained, that an agreement to poison or stab, &c. is no treason, if the very act do not ensue, as the Answerer very falsly alledges in the second column of his sixth page, toward the lower end. for those have a manifest tendency towards killing, nor are they any distinct species or sorts, or kinds of treason from the killing the king, as that of levying of war, and seizing the king's guards, (especially not shewing what guards) are a distinct species from that of killing the king, and need not necessarily be understood to terminate and conclude in a killing the king. Taking the king prisoner, or seizing his person, may more reasonably be thought to aim at a killing of the king, or have a tendency towards it.

And the indictment ought surely to have declared and expressed clearly and plainly what guards were meant, there being variety of guards; for every indictment ought to contain certainty.

Herein the very indictment was faulty.

The bold Answerer hopes the king will always preserve those guards, though the parliament have declared their sense to the contrary, when the present extraordinary occasion shall be over.

This daring presumptuous Answerer, in defiance of the act for reversal of the lord Russell's attainder, the trial having been partial, unjust, and illegal, as the act affirms it, yet dares to aver in his last page, that there was evidence enough to justify all concerned in the prosecution and trial.

The Answerer, towards his close, takes great care, and is much concerned, to justify the king's solicitor that then was.

And this would incline one to think, that the then king's solicitor was not the Author of that Antidote against Poison, nor of this last print intituled, The Magistracy and Government vindicated; which are so much alike in their style and strain. And, in truth, that late king's solicitor doth utterly deny, that he had any hand in either of them. And sir George Jefferies, the last lord Chancellor, could not compose this last. This being so, it may easily be judged where it must fix: for this, look into the printed trial.

I now refer the Answerer to justify himself at law, if he happen to be in danger of an exception out of an act of general pardon and indemnity, where he may have a fairer opportunity to defend himself in his own more immediate concern, for endeavouring to subvert

the law, which ever proves too hard for all its opposers. And I will so far follow his humour and vein, as to conclude with verses too.

> Rode, caper, vitem; tamen hic cum stabis ad aras,
> In tua quod fundi cornua possit, erit.

Which I thus English:

> Go, spiteful satire, browze that sacred vine
> (The law); but know there shall not want for wine
> To pour upon thy head, which may suffice
> To render thee a perfect sacrifice.

Remarks on the Lord RUSSELL's Trial, by Sir JOHN HAWLES,* Solicitor General in the Reign of William III.

THE Plot being noised abroad, the persons beforehand resolved on were seized on, and the lord Russell and others were clapped up close prisoners.

The lord Russell having been for some few weeks a close prisoner in the Tower, was, the 13th of July, 1683, brought to the Old-Bailey and arraigned for High-Treason, in designing to raise a rebellion, &c. and the same morning was tried. He desired he might not be tried that day, for he had some witnesses which would not be in town till night: Which being denied, then he desired that the trial might be put off till the afternoon: which was likewise denied. He asked whether he might not make use of any papers he had: which was allowed. He desired he might have a copy of the pannel of the jury that was to pass on him: he was told he had a copy delivered to his servant some days before.

The jury being called, he challenged the foreman for being no freeholder in London. To argue which, counsel were assigned him who presently came into the court, and having excused their not speaking more to the matter, for want of time to consider of it, argued, that it was a good challenge, because at common law every juryman ought to be a freeholder; that the statute of 2 Hen. 5. provides, none shall be a juryman in capital matters, but a freeholder of forty shillings yearly; That there is no difference between a city and county and a county at large, at common law; nor by that statute 7 Hen 7. which takes away the challenge of no freeholder in the ward in London, and shews it was a good challenge in London before that time: The 4th of Hen. 8. which likewise takes away the challenge of no freehold in London, shews it was a good challenge before that time; and the same was inferred from the 23d of Henry 8: But though none of those statutes extended to treason, yet if it was a good challenge in treason in London before those statutes, it was so still.

The king's counsel said, at common law it was not necessary that a juryman in treason, should be a freeholder; and though treason is within the 2d of Henry the 5, yet by the statute of queen Mary, the statute of the 2d of Henry the 5th, as to treason was repealed; that it was a point they would not have lost to the city of London; that if the prisoner should peremptorily challenge thirty-five, as by law he might, there would scarce be found thirty-five more freeholders in the city, the inheritance of the city being mostly in the nobility and corporations, and consequently treasons may be committed in the city, and there would not be enough to try it; and in the case of the city of Worcester, in Quo Warranto brought against them, that challenge was taken and over-ruled by the King's-bench, by advice of the judges of the common-pleas; that the Venire mentions no freehold, but only 'Probos et Legales 'Homines de Vicineto.

Then the chief Justice [Sir Francis Pemberton,] asked Mr. Pollexfen, whether he did find any judgment in treason at common law, that no freehold was a challenge? Who answered, he did not. Whereupon the chief justice replied, that then he did not speak *ad idem*; for he took it, in case of treason and felony, at common law it was no challenge; and the Statute of Henry the fifth, in that point, was introductive of a new law, and that statute, as to treason, was repealed by that of queen Mary; and that a case cannot be found of such a challenge in treason since the statute of queen Mary, but it was business of great importance.

The chief baron [William Montague, esq.] was of the same opinion; for the same reason, justice Windham and justice Jones were of the same opinion; the last added, the rather because the prisoner is allowed to challenge thirty-five peremptorily: and justice Carlton was of the same opinion, and the rather, because no precedent had been offered of such a challenge before: Justice Levinz was of the same opinion, for the same reason; Justice Street was of the same opinion, for the same, reasons; and thought they had been very nice, when the life of the king lay at stake, and all the customs and privileges of the city of London seemed to be levelled at in that point: Justice Withins was of the same opinion.

Then the chief justice told the prisoner, the court over-ruled his challenge; but that he had no hardship put upon him, for the reason of law for freeholders was, that no slight persons should be put upon the jury; but in his case there were persons of quality and sub-

* See his Remarks at the end of the Cases of Fitzharris, vol. 8, p. 426, Colledge, vol. 8. p. 723, Lord Shaftesbury, vol. 8, p. 835, The city of London, vol. 8, p. 1039, and count Coningsmark, p. 125, of the present volume of this Collection.

stance put upon the jury, which was the same in substance with a jury of freeholders.

These being the reasons of over-ruling that challenge, they may be ranked under these heads: There was no such challenge at common law; if there were, yet not in treason. And if it were a challenge in treason, where a trial is in a county at large, yet not where it is in a city and county: and if in a city and county yet not in London.

The assigning many reasons for one and the same thing, makes the judgment justly suspected: for if when two witnesses to one fact varying in the circumstances of it, are justly suspected in point of truth, several reasons for the same judgment make the knowledge or integrity of the judges justly suspected: every case in law, as my lords Coke and Hale say, standing upon its own particular reason; and therefore when many reasons are given, it looks as if the judges were hunting about for reasons to make good what before hand they are resolved to vent for law, rather than that their judgment is the result of those reasons.

But to consider them singly, I do indeed think there is no express resolution, that at common law in any case of any capital matter, it was a good challenge (except the case of Fitzharris, already taken notice of); but in civil matters my lord Coke is express, that at common law it was a good challenge; and with him sir John Fortescue seems to concur, who, in his exposition on that statute of Henry the 5th, says, if the debts or damages be under forty marks, the juryman shall have land to a competent value, according to the discretion of the justices. My lord Coke saith, in such case any freehold sufficeth; now how can that be true, if it were not necessary at common law to have some freehold? For the statute makes no provision for debt or damages under forty marks, it must therefore be by common law that some freehold was necessary, and that any freehold shall suffice. And surely, if in civil matters it was necessary for a juror to have a freehold, much more in capital matters, and mostly in treason. It is very plain, that at common law no man was thought to be a sufficient man, but a freeholder; and though now, and for some time past, the value of trade is equal to that of land, yet heretofore it was not so, and by what was heretofore, the common law is to be known.

The matter of trade was heretofore so inconsiderable, and the traders themselves for that reason so vile, that it was a disparagement for a freeholder to marry with a tradesman, as is to be seen by the statute Merton:* and therefore mere tradesmen, and not freeholders, were not to be trusted with the concern of a trial in a civil matter, and much less in a capital, and least of all in a trial of High-Treason.

The chief justice Pemberton says, that the reason of freeholders was, that no slight persons should be put upon a jury where the life of a man or his estate, is in question; it is plain, therefore, the concern of the thing to be tried, is the measure of the substance of the juryman. If that be true, the trial in treason, is of the highest concern: How then is it true as some of the judges concluded, that though freehold might be requisite in some cases at common law, yet in treason certainly not? It is indeed a paradox to me.

And the peremptory challenge of thirty-five allowed the prisoner, is no reason against the challenge of no freeholder: for that is only a privilege allowed the prisoner *in favorem Vitæ*; and it might as well be argued, that no challenge at all to the petty-jury shall be allowed the prisoner, because he had a grand-jury past upon him before, which is also *in favorem Vitæ*; that no man, at the king's suit shall be so much as questioned for his life, till above the number of twelve substantial men have on their oaths said they think the accusation true; and after that, he is allowed to challenge peremptorily thirty five, and with cause without number. To affirm, therefore, that no freehold is not a cause of challenge, because he may challenge peremptorily thirty-five, is a *non sequitur*: and though non-usage, that is to say, that this challenge was never taken in treason, was then used as an argument, yet it is the weakest of arguments which is to be found in Littleton; though even that fact was not true, for the challenge was taken and allowed before; unless you will distinguish and say that in that case it was taken by the king, and therefore good: and in this by the prisoner, and therefore bad. I am sure that difference cannot be warranted, either by authority or reason; and what though Cooke, and the other regicides, and other persons, did not take that challenge, is it an argument that they could not, or that they thought they could not? Perhaps they had forgotten to do it, as much as the judges in this case had forgotten their resolution in Fitzharris's case; or perhaps the could not take it, their jury being freeholders; or perhaps it was to no purpose, they being tried in Middlesex, where a jury of freeholders would quickly be found. Nor is it an argument that no case of this challenge at common law is to be found in the books; for since the statute of Henry 5. to the time of queen Mary, it could never be a case; and from that time to this it could never be a case in felony: and the law being so very plain that if the fact were with the prisoner, it was always allowed, if against the prisoner it was disallowed, not as not good in point of law, but as not true in point of fact; therefore the challenge perhaps was not taken notice of in the books, which only report difficulties.

It is true, of late, and it is but of late practice, the whole transactions of a trial are published for the benefit of the publisher, rather than for the common good; and that indeed was the motive of publishing Fitzharris's trial signed by Fra. Pemberton, and of Colledge's trial

* See Stat. of Merton, cap. 7. 2 Inst. 92. Cok. Lit. 80.

signed by Fra. North, and of my lord Russell's signed by William Pritchard, mayor, and Col. Sidney's trial signed by George Jefferies, and Mr. Cornish's trial signed by Thomas Jones. And that is the reason why, since that Statute, we find no case of such a challenge in capital matters, and before that statute the year books go but a little way.

It is enough there was no resolution that it was not a good challenge, for it will be of the king's side to shew why that should not be a good challenge in treason, which was in most, if not in all other cases.

It is pretty to observe what steps were made in over-ruling this challenge: some were of opinion that it was no challenge in any case at common law; so said the attorney and solicitor general, the chief baron, justice Windham, and baron Street. The chief Justice thought it no challenge at common law in treason and felony only, but that the statute of Henry 5. made it a challenge in treason, and felony: but whether the statute of Henry 5 made it a challenge in treason, the chief baron and Justice Windham doubted. Justice Jones thought it no challenge at common law, in treason; Justice Levinz would not determine whether it was a good challenge in any case at common law, but he and baron Street were clearly of opinion it was not a good challenge in London. The chief justice thought it a business of great consequence, not only for the prisoner, but for all other persons: baron Street thought the judges had been very nice in the matter, which, in the phrase of the law, is giving themselves a great deal of trouble in a matter very clear, or of no moment.

But though they differed in their reasons, yet all agreed in this, and in this only, that tried he should be, and that presently.

Then as for the custom of the city of London, to try without freeholders, how did it appear to the judges that there was any such custom? Did they ever read of any such custom in the city of London? Nay, were not the statutes which were cited, where no freehold was made no challenge in London in particular cases, as so many express resolutions, that there was no such custom in the city? for if there had been such custom, what need those statutes? to which the judges never vouchsafed any answer, because in truth they could make none.

But it was objected, there was the resolution in the city of Worcester's case, which I agree was of as good authority, and of no better, than the judgment in the principal matter of the Quo Warranto. And it was likewise objected, there would be a failure of justice in cities, if the challenge were good for want of freeholders.

I ask, would it have been a failure of justice at common law, or by reason of somewhat which hath happened of late times? there is none who pretends to know any thing of the history of England, that will say, that heretofore the cities were not inhabited mostly by the gentry, and especially the city of London; partly for luxury, partly for their security, and then there was no want of freeholders in the cities; but when matters became more quiet, and trade increased, and made houses in the cities more valuable, then were houses of equal convenience, and less price, situate in the suburbs, or in the country; gentry by degrees parted with their houses in the cities to tradesmen for profit, and removed themselves to other places. And I believe it may be remembered that even the Strand, in the memory of man, could have furnished the county of Middlesex with a sufficient number of freeholders; and yet now, for the above reasons, you can hardly find a jury of freeholders there.

Besides, it must be remembered, that London heretofore had many of the king's palaces in it, and the country gentlemen did not then, as now, take up with lodgings, but were inhabitants of houses: and if the failure of justice happen by the above means, I am sure it is against the oath of the judges to supply that defect with their resolution; but it ought to have been supplied by an act of the legislative power.

If the necessity of the thing warrants the judgment, how unlearned were the judges in Henry 7 and Henry 8's times, that they did not supply the defect in law in the city of London, and other cities, by their resolutions? How vain were the parliaments in those times, who supplied those defects in law, mentioned in the acts cited by those statutes, which were works of time and trouble, if they had thought the judges, by their resolutions, had power to do it? For if they had power to do it, they could have done it extempore, as in this case.

For the last objection, that the writ mentions only *Probos et Legales Homines*, and speaks nothing of freeholders; *Legales* may be very well interpreted, to imply men qualified by law; but I take it, that *Homines* implies it: for by *Homines de Comitatu* are meant freeholders of that county; and all others, in point of trust, are not considered in law. My lord Coke, in his comment upon the 28th of Eliz. 1. cap. 8. which gives the election of sheriffs to the people of the county where the sheriffwick is not in fee, says, people there, means freeholders of the county; and the same is understood by writs to the counties to choose coroners, verdurers, and the like, though the writ says, 'per communitatem Comitatus, et 'de assensu Comitatus.'

And though the writs of *Venire* in civil matters, of late days, mention what freehold each juror shall have, yet that is by the statute of the 35th of Henry 8, cap. 6. which expressly commands the writ shall so express it, in all issues joined in Westminster, to be tried between party and party; before which time it is plain, the *Venire*, even in civil matters, did not express any freehold, and that statute doth not extend to issues joined on indictments.

Now if upon all which hath been said, it is not plain, that the challenge ought to have been allowed, yet sure it was doubtful; and if

so, and a matter of great consequence, as the chief justice said it was, why might not the counsel for the prisoner have had a little more time to have considered of the challenge before they had argued it, or the judges have taken a little time to consider the matter before they had given their judgment? I dare say, none of them could remember any positive resolutions one way or other, nor upon a sudden was it expected they should; and therefore, for their own sakes, if not for the prisoner's, they might have taken the morning, if not the day. The prisoner desired his trial to be put off, for to have considered of it; in that time, perhaps, some of them might have remembered, or others might have put them in mind of their resolutions in Fitzharris's case; they might have considered how to distinguish between that case and this, and not run away with it, that that challenge was never made in treason, as all the judges affirmed. But my lord Russell was told by the Court, that they always tried the prisoner, in treason, the day he was arraigned, and could not put off the trial for a morning, without the attorney-general's consent. But surely that is not true: Plunket and Fitzharris were tried the term after they were arraigned, though the attorney-general opposed it. It is true, he submitted to the rule, as it was as much his duty to do, as the prisoner's; but if there be a difference between an arraignment at Westminster and the Old-Bailey, as to the speeding the trial, the place will not vary the reason of the thing, if there be not any law for it, as there is not; but even at the Old-Bailey, the trial in treason hath been put off to another sessions, it was done in Whitebread's case, and in many other cases. If it be said that was by the attorney-general's consent, I say, that makes no difference; for the judge is to be indifferent between the attorney-general and the prisoner. If the Court must order nothing but what the attorney assents to, why is not the prisoner tried and adjudged by the attorney alone? Or what needs all the formality of a trial? If it be said, that that trial was put off, because the king's witnesses were not ready; I say, there is the same reason to put off a trial, because the prisoner's witnesses are not ready, and that was the pretended, though not the true reason of putting off Fitzharris's trial to another term, and there is no law to the contrary.

It is totally in the discretion of the judges to put off a trial; which discretion ought to be governed by reason.

But indeed this was extraordinary, and without any precedent: it can never be shewn in the case of the greatest or meanest persons, being accused of the greatest or least crime, that ever the delay of a day, much less of a morning, for his trial, was denied, where he shewed but any colour for what he said, when the sessions were to continue after the time he desired, as in this case it did. Fitzharris said his witnesses were in Holland, and though he named no persons, yet his trial was put off to the next term; my lord Russell said his witnesses could not be in town till that night, yet the respite till the next day was denied. all persons agreed, that there was some extraordinary reason for it, and before the trial was over, the riddle was out.

My lord of Essex was killed, or to be killed that morning; as to this matter, it is not material whether by his own or another's hand: they were sensible the evidence against my lord Russell was very defective, and that accident was to help it out; but that would not avail, unless it were a surprising matter upon the jury: should the jury have had a day's, or but a morning's time to consider of it, people might have been talking with the jury. It was very material to ask, what influence that accident would have on my lord Russell's trial, whether it was any evidence against him: they might have been told, what was true, that no person killed, was in law supposed to have killed himself, till a coroner's inquest had sat upon the view of his body, and found it so; and if it had been so found, yet even that had been no evidence against another, because the coroner's inquest never found the reason why a man killed himself; and if they should find the reason, yet even that was no evidence against another, because that other was never called before the coroner's inquest to make his defence. They might have been told a great many circumstances of the improbability of the killing himself; they might have observed that the king's counsel were so far sensible, that it was no evidence against my lord Russell, that they never attempted to prove the earl of Essex was dead, or killed himself: it was only slily insinuated, together with the reason of it, which had its effect, if the report be true of some of the jurymen's saying, 'it went further with them than all 'the evidence of the witnesses produced;' and if that be true, there was a reason, though not a just one, for speeding that trial beyond the ordinary methods of trials at the Old-Bailey.

But though my lord Russell had seemingly less favour in that matter than any other person, even than Colledge, who had the respite of two or three hours between his arraignment and trial, (though that was not in favour to Colledge, but only to examine his papers which they took from him, and instruct their witnesses accordingly) yet in other things he had more favour or justice done him: his papers were not taken from him; it was agreed to be his right to use them without questioning from whom he had them, what they were, or the like, as in Colledge's case was done; he had a copy of the pannel of the jury, even before his arraignment, given him; and the chief justice said it never was denied in case of life that he knew of, which was denied Colledge before he pleaded; because then it was pretended there was no issue joined, till Plea pleaded, after which the Venire is awarded;

though all men know, that the sheriff summoned the jury before the arraignment, and even after issue joined. Colledge was denied a copy of the pannel, only he was told, he should look every juryman in the face before he was sworn; and as far as the looks of a man betray him, he should be satisfied whether he was honest or not, which is an ill way of judging; for I think the person (lord chief justice North) that gave that rule, would have deceived any man by his countenance, who had not known his practices.

But says the attorney-general (sir Robert Sawyer), in my lord Russell's case it was matter of favour, and not of right, therefore no injustice to Colledge. I confess of all men, who ever came to the bar, he hath laid down the most rules, which depend totally upon the authority of his own saying: in Colledge's case he affirmed, that the king's witnesses ought not to be kept out of the hearing of each other, when they gave their evidence (a method used in civil matters, the reason of which is well known, and none can show any law or reason why it should not be used in capital matters), with as much reason and authority, as what is now said.

First, I do affirm there is no authority in law, which says a prisoner shall not have a copy of the pannel; in the next place I affirm, that after a jury struck in a civil matter, each party ought to have a copy of the pannel, in order to provide himself of a challenge, if there be any cause. In the last place I affirm, that by law, more favour is allowed a defendant in a capital matter, to defend himself, than in a civil. And if these propositions be true, let any person, if he can, make out the law or reason of the above assertions.

Of a like stamp was the saying of the attorney, when my lord desired a copy of the matter of fact laid against him, that he had notice of it; for questions were put to him about it, and he was with his lordship himself, and examined him upon those questions, which was a favour to him, that he might know what the matter was he was accused of.

I do not affirm that ever it was practised, to give the prisoner a note of the fact to be given in evidence against him, proving treason, or that it was ever denied till then, nor do I know of any law *pro* or *con* in the case; but if one would judge by reason or practice in parallel cases, I think it ought not to be denied.

I know not at present of more than two sorts of general indictments, and those are of treason and barratry; the last is a general indictment, for stirring up suits without reason, and without mentioning any suit in particular: and therefore if by the rule of the court the defendant was not helped, which obliges the prosecutor to give the defendant, some reasonable time before the trial, a note of what suits he intends to give in evidence against him, it was impossible for the defendant to escape, if it had been his misfortune to have had five or six suits.

For I never yet saw a witness produced against the indicted, but he would swear the indicted brought an action against him without reason; and yet I have often seen, that the indicted having had notice, that that was one of the suits he was intended to be charged with, hath been able to prove that he had good, or at least probable cause of suit, which he could not have done if he had not notice. And in treason, for designing to kill the king, there have been so many interpretations of facts tending that way, that it is almost impossible for an innocent to defend himself, unless he had notice of the fact intended to be insisted on at the trial.

There are yet some expressions which mightily puzzle me: the king's counsel said in the argument of the challenge, that they would not have the point of being a juryman, though not a freeholder, lost to the city of London; and one of the judges said, it was the privileges of the city were struck at in that point. If by those expressions be meant, that it is for the benefit of the public that there should be no failure of justice, I agree to it; but if it be meant, that it is for the benefit of the citizens to be jurymen, I deny it: and I think nothing shews it plainer, than that it is a privilege that a citizen shall not be drawn out of the city to be a juryman; that a nobleman shall not be on a jury; that it is a matter of prerogative in the king, and favour to a particular person, to grant a charter of exemption from being on a jury. So that, if I consider the law, I know what is meant by those expressions; if I consider allowed practice, it is true, a juryman may earn his eightpence for a trial; but that is too inconsiderable pay for persons of substance, as the jurymen in this case were said to be, to be fond of the employ, or to account it a privilege. Yet even that was but in civil matters; in criminal matters not capital, the Jury were heretofore paid if they acquitted the defendant, but not if they found him guilty, though of late it hath been practised to give them more, and treat them higher if they convicted the defendant, than if they acquitted him: but in capital matters, as the case in question was, it was never allowed, or at least owned, to pay the jury, be the verdict which way it would.

Having spoken to the preliminaries, I proceed to the trial wherein colonel Rumsey was first produced: he said, he was sent by my lord Shaftesbury about the end of October, or beginning of November; who told him, he should meet at one Sheppard's the duke of Monmouth, lord Russell, lord Gray, sir Thomas Armstrong, and Mr. Ferguson, to know of them what resolution they were come to about the rising at Taunton. Sheppard carried him where they were, and answer was made, Mr. Trenchard had failed them, and there would be no more done in the matter at that time; thereupon the lord Shaftesbury took a resolution to be gone. Mr. Ferguson spoke most of the message, and he thought the lord Gray spoke something to the same purpose; he did not know how often he had been at that house, he was there more than once, or else he heard

Mr. Ferguson make a report of another meeting to the lord Shaftesbury, my lord Russell was in the room, and that was all they said at that time that he remembered, he was not there above a quarter of an hour. There was some discourse about seeing in what posture the guards at the Mews and Savoy were in by all the company, to know how to surprize them if the rising had gone on; sir Thomas Armstrong and Mr. Ferguson began, all debated it; he thought the duke of Monmouth, the lord Gray, and sir Thomas Armstrong were sent to view them; the rising was appointed to be the 19th of November; he was spoke to by the lord Shaftesbury to go to Bristol if the rising had gone on, but in what quality was not determined. The lord Russell agreed to the debate. Being asked if my lord Russell said any thing there, and what; he answered, my lord Russell spoke about the rising at Taunton. Being asked what my lord Russell said, he answered, my lord Russell discoursed of the rising. Being asked if my lord gave his consent to the rising, he said he did.

The next witness was Mr. Sheppard, who said, in October last, Mr. Ferguson came to him in the duke of Monmouth's name, and desired the conveniency of his house for himself and some persons of quality, which he granted. In the evening the duke of Monmouth, lord Gray, lord Russell, sir Thomas Armstrong, colonel Rumsey, and Mr. Ferguson came, not all together, but the one after the other. Sir Thomas Armstrong desired, that none of his servants might come up, and that they might be private; so what they wanted he went down for, a bottle of wine, or so: the substance of the discourse was, to surprize the king's guards; and in order to it, the duke of Monmouth, the lord Gray, and sir Thomas Armstrong, went one night, as he remembered, to the Mews, or thereabouts, to see the guards; and the next time they came to his house, he heard sir Thomas Armstrong say, the guards were very remiss in their places, and not like soldiers, and the thing was feasible if they had but strength to do it. He remembered but two meetings there; they came in the evening; he neither heard nor saw any company at his door when they came in, as he remembered, the lord Russell was both times there; he had no discourse with the lord Russell, nor the lord Russell with him at that time, but since he had. He did not remember colonel Rumsey discoursed the lord Russell about any private business, nor remembered any farther discourse; he remembered no writings nor papers read at that time: upon recollection, he remembered one paper read by Mr. Ferguson, in the nature of a declaration, setting forth the grievances of the nation, the particulars he could not tell; it was a pretty large paper, it was shewed for approbation, as he supposed, when to be set out was not discoursed; it was shewed to sir Thomas Armstrong, and, as he remembered, the duke of Monmouth was present, and he thought colonel Rumsey was present. Colonel Rumsey said, he was not present, it was done before he came. Mr. Sheppard went on and said, the design of the paper was in order to a rising, as he supposed by the purport of it; he would not say the lord Russell was there when that paper was read, but he was there when the talk was about seizing the guards; he could not be positive as to the times of those meetings, but it was when the lord Shaftesbury was absent from his house, he absented about Michaelmas-day; he could not be positive that my lord Russell was at both meetings; he thought he was at both, he was sure he was at one.

The last witness was the lord Howard. He said he brought captain Walcot acquainted with the lord Shaftesbury; and upon his account captain Walcot soon gained a confidence with lord Shaftesbury. Walcot told him, the people were sensible all their interests were going to be lost by the violence offered to the city in the election of sheriffs, and that they were resolved to take some course to put a stop to it: that there were several meetings about it, and some persons began to prepare to act; that some had good horses, and kept them in private stables, and he resolved to be one in it: he having an estate in Ireland, he dispatched his son thither, and ordered his son to turn his stock into money; the son went about August. that the 30th of September, Walcot dined with him; told him, that the lord Shaftesbury was secreted, and desired to speak with him: Walcot brought him to the lord Shaftesbury, who complained of the duke of Monmouth and the lord Russell for deserting him; but there was such preparation made in London, that now he was able to do it of himself, and intended to do it suddenly; he had above 10,000 brisk boys ready to follow him when he held up his finger, they would possess themselves of the gates, and in twenty-four hours they would multiply to five times the number and would be able to possess Whitehall by beating the guards. The lord Howard went to the duke of Monmouth, told him the lord Shaftesbury's complaint, who said, the lord Russell and he told the lord Shaftesbury from the beginning, that there was nothing to be done by them in the country at that time. The matter of the discourse between him and the duke of Monmouth, him and the lord Shaftesbury, and him and Walcot, is too tedious to relate, and as little to the purpose, if the jury had understood matter of law, which they did not; in it he takes care to shew what confidence my lord Shaftesbury had in him, more than in the duke of Monmouth or the lord Russell; how very cautious he was, and how precipitate the lord Shaftesbury was, and that what he told the duke of Monmouth, the duke told the lord Russell; and he heard the lord Russell had been with the lord Shaftesbury, and put off the intended rising. At which the lord Russell interrupted him, and said, he thought he had very hard measure, there was a great deal of evidence given by hear-say only. Whereupon the chief-justice said it was no-

thing against the prisoner; he declared it to the jury, but the attorney-general bid the lord Howard go on in the method of time, and that it was nothing against the prisoner, but the witnesses were coming to it, if his lordship would have patience, he assured him so. The lord Howard went on where he left off; with a story between him and Walcot of an intended rising, and of some dark sayings let fall by Walcot and the lord Gray, importing a design upon the king's person; but the lord Howard was very careful to put all off, but at last it was resolved to rise on the 17th of November: but the lord Howard fearing it had been discovered, because he saw a proclamation a little before, forbidding bonfires without the Lord Mayor's leave, that of the 17th of November was also disappointed, and the lord Shaftesbury went away and died. But considering they had gone so far that it was not safe to retreat and likewise that so great an affair as that, consisting of such infinite particulars, was to be managed with so much finesse, they erected a cabal of six persons, the duke of Monmouth, lord of Essex, lord Russell, Mr. Hampden, Algernon Sidney, and himself, about the middle of January last: and about that time they met at Mr. Hampden's house, where it was considered whether the insurrection should be in London, or in a place distant; what countries and towns were fittest and most disposed to action; what arms necessary to be provided, how to raise twenty-five or thirty thousand pounds, and how they might so order it as to draw Scotland into a consent with them.

About ten days after they met at the lord Russell's house, and resolved to send some persons into Scotland to the lord Argyle to invite some persons hither to give an account of that kingdom; the persons to be invited were sir John Cockram, lord Melvil, Sir —— Campbell; that matter was referred to Col. Sidney, who told him he had sent Aaron Smith; they agreed not to meet again till the return of the messenger. The messenger was gone about a month; it was six weeks or more before he returned; and then his lordship was forced to go into Essex, where he had a small concern; there he staid three weeks, and when he returned, he was informed sir John Cockram was come to town, and afterwards he was forced to go to the Bath, where he spent five weeks; and from that time to this was five weeks, all which time was a parenthesis to him; and that he and the five mentioned erected themselves by mutual agreement into that society.

Atterbury swore Campbell was in his custody; then colonel Rumsey was asked whether my lord Russell heard him when he delivered his message to the company, and in what place of the room the company were? Who answered that when he came in, they were standing by the fire side, but all came from thence to hear him; and when my lord Russell said colonel Rumsey was there when he came in, Rumsey said, No, the duke of Monmouth and lord Russell went away together.

Then in behalf of my lord Russell, the earl of Anglesey was examined, who said, that visiting the earl of Bedford, the lord Howard came in, and told the earl of Bedford, that his son could not be in such a plot, or suspected of it, and that he knew nothing against the lord Russell, or any body else, of such a barbarous design: and he was going on again with what the lady Chaworth had told him, but was interrupted by the king's counsel, telling him, as the court would not permit them to give hear-say in evidence against the prisoner, so they must not permit his lordship to give hear-say in evidence for the prisoner.

Mr. Howard said, that the lord Howard took it upon his honour, and his faith, he knew nothing of any person concerned in that business, and not only thought my lord Russell unjustly suffered, but he took God and man to witness, he thought my lord Russell the worthiest man in the world.

Dr. Burnet said, the lord Howard was with him and he did then, as he had done before, with hands and eyes lift up to heaven, declare, he knew nothing of any plot, nor believed any, and treated it with great scorn and contempt.

The lord Cavendish testified as to the life and conversation of the lord Russell, and thence concluded, it was not likely he should be guilty of any such matter, and heard the lord Russell speak of Rumsey, as if he had an ill opinion of him, and therefore it was not likely he should trust him. Dr. Tillotson spoke of his conversation; Dr. Burnet and Dr. Cox spoke of his conversation and of his averseness to all risings. Dr. Cox testified, that my lord Russell said the lord Howard was a man of luxuriant parts, but he had the luck not to be trusted by any party. The duke of Somerset spoke of the lord Russell's conversation. The lord Clifford, Mr. Leveson Gower, Mr. Spencer, and Dr. Fitzwilliams spoke of the lord Russell's conversation. The lord Howard being asked by the jury what he said to the earl of Anglesey's evidence, owned what the earl said, but he did it to outface the matter; and if he said untrue, he ought not to be believed on his oath, and insinuated, that he meant what he said to be meant of a design of murdering the king, which he did not believe the duke of Monmouth or the lord Russell guilty of.

This being the sum of the evidence given against, or for my lord Russell, let us consider how far it will justify the verdict given against him. first, consider the improbability of Rumsey's evidence, if my lord Cavendish said true, that he should trust Rumsey to hear the debate about seizing the guards, when the lord Russell had an ill opinion of Rumsey. As for Rumsey's delivering the message, there was no great matter in that, it is impossible to hinder people's speaking, and it is not treason to conceal what's said; besides, it was well known, it was Rumsey's way to talk extravagantly, in order to accuse those that heard him, if they did not discover it. But besides the improba-

bility of the evidence in respect of the person, the manner of delivering the evidence, and the evidence itself was such as carried no colour of truth with it: he said he delivered his message and had an answer to it; and being asked what the company said further, answered, that was all that was said at that time, that he remembered, and gives a very good reason for it, for he staid not above a quarter of an hour; and added, that he was not certain whether he then heard something of a declaration there, or whether Mr. Ferguson reported it to my lord Shaftesbury, that they had debated it: and yet when Sheppard said Rumsey was there when the declaration was read, he denied it, and said it was read before he came in. Being asked to what the declaration tended, he answered to another matter, viz. that there was some discourse about seeing what posture the guards were in, and said, that all the company debated it; and being drawn on by questions, said, it was in order to seize the guards, if the rising had gone on. Now how doth that part of the evidence agree with what he said before, that there was nothing more said than the delivering his message, and the answer to it? And how doth it agree with the time he said he staid, which was not above a quarter of an hour? Whereas that debate, if all the persons present (being six) debated it, as he said they did, would certainly have taken up a larger time. How does the first and last part of his evidence agree, when he said, my lord Russell agreed to the answer of his message? And being asked whether and what he spoke to it, said, he spoke about the rising at Taunton, but doth not say what, and yet in the first part of his evidence, he said, when asked who sent the message back, Mr. Ferguson delivered the answer, the duke of Monmouth and the lord Russell were present, and he thought the lord Grey said something to the same purpose. But what credit could be given to any part of a man's evidence, whose memory was so shallow, that he could not remember whether he was at two meetings, or whether Mr. Ferguson related one of them to the lord Shaftesbury? Yet both were supposed to be within the compass of a year, whereas a man of sense is supposed to remember all his own acts for seven years past, which is the reason why the chancery obliges a man to answer as to his own acts positively for seven years, without saying, as he believeth, or as he remembereth, or the like. What credit is to be given to a witness who testifieth what was said in company, and by whom, when his memory doth not serve to answer positively whether he was in the company, or whether another told him what was there said? He might as well have said he was there, or dreamt he was there, or that he heard the discourse, or dreamt of it, which had carried equal credit with it.

It was plain the man was not of sane memory enough to make a will, much less to be a witness in the trial of a man's life; and nothing can be said for him, but that he was a witness for the king, that is to say, a madman may be a witness to take away a man's life, which is as good law as a great deal of other cant vented as a part of the prerogative.

It is true, one of the king's counsel recommends Rumsey to the jury, as a very credible witness, under the notion of an unwilling witness: but had the same person been a counsel for the prisoner, he would have called Rumsey a dancing witness, for he said backward and forwards; and an amazed witness, for being asked one thing, he answered another; being asked as to the declaration, he answered to the seizing of the guards; being asked whether my lord Russell assented to the answer of the message, he replied, Yes, because he talked of the rising, &c. which might be as well against as for it.

Sheppard's evidence was to the design of seizing the guards; and as to the declaration, he remembered but two meetings, at both which he said, as he remembered, my lord Russell was present, but he could not be positive in that, and the times of the meetings he did not remember: he said, the substance of the discourse was, how to surprize the king's guards; and the duke of Monmouth, the lord Grey, and sir Thomas Armstrong went to see the guards, as he remembered: and the next time they came to the house, sir Thomas Armstrong said the guards were very remiss, &c. Taking this evidence by itself, without tacking Rumsey's evidence to it, it was so far from being evidence of treason, that it was no crime; for he doth not say, it was intended to be put in practice, notwithstanding all said by him both the discourses and persons viewing the guards, (which last was not evidence, nor ought to have been given in evidence) might be a matter to try each other's judgments, as well as an evidence of a thing designed: and if it be capable of two interpretations, the law hath said, it shall be taken in *mitiore sensu*, in favour of life. That distinction was taken by the chief justice in Blague's case, the day after his trial, where the evidence against him was a discourse about taking the Tower, as high a crime as seizing the guards; and upon that Blague was acquitted. It is true, Rumsey said it was in order to be put in practice, when the rising should be in the country; but that he did not say at first, but was afterwards led to it by questions: nor did he speak it as a thing at that or any other time determined, but as his own surmise or guess, because he knew of an intended rising; yet how foolishly did he contradict himself? For, says Rumsey, it was to have been put in practice if the intended rising had gone on; and yet at the same meeting he had said before, the rising was put off: how contradictory therefore is it to say they made preparations for a thing they had laid aside before? And it is plain Sheppard speaks of the same time; for both agree Rumsey was at that meeting, though they do not agree how soon he came: besides, how could Sheppard speak positively of the discourse, or

of the design of it, when he owns he did not hear all the discourse, and gives a very good reason for it? For he said he went several times down to fetch wine, sugar, and nutmeg, and did not know what was said in his absence: he said he heard nothing about a rising, nor heard any further discourse; but on recollection, he heard something about a declaration of grievances in order to a rising, as he supposed; the particulars he could not tell. Now what sort of evidence was that? In all civil matters, a witness shall not be permitted to give evidence of the content of a deed or writing, without producing the deed or writing itself, or a true copy of it, and upon very good reason; for he may make an untrue construction of it. I remember a witness who swore to the content of a deed of intail; and being asked, whether he knew a deed of intail, and by what he knew the deed he spoke of to be a deed of intail? answered he knew a tailed deed very well, and he knew the deed to be a tailed deed, because it had a tail half as long as his arm, meaning the label of the deed. And if this be the practice and the reason of the practice, in civil matters, shew me any authority or reason any thing should be permitted to be given in evidence in treason, which is not permitted to be given in evidence in the trial of any civil matter.

If you say as justice Levinz said in a like case in Colledge's trial, that it would be the difficultest thing in the world to prove treason against a man, if the law were not so, and the king would in no sort be safe; on the other hand, I say as Colledge there said, if the law should be so, no private person is safe: and if there be mischief of either hand, the law is and must be judge, which hath taken care (though to no purpose, because it hath not been observed) that there should be a stricter proof in treason than in any civil matter, or in any other crime: and how the judges came to permit that loose evidence in treason to be given, which of late years they have done, no just or honest account can be given.

The last material witness against my lord Russell, was my lord Howard, (as for Atterbury's evidence, it ought not to have been permitted to be given, as shall be shewn, nor was it material) to no part of whose evidence any credit ought to be given, even by his own confession: he was surely in the right, when he said that the religion of an oath is not tied to a place; and I will add, not to a form, but receives its obligation from the appeal therein made to God: and therefore if he said (though I own he was not bound to say it) to the earl of Bedford, Mr. Howard, and Dr. Burnet, what was testified against him, he ought not to be believed in any part of his evidence. Did he say true to my lord Bedford, when unsent for and unasked, (for aught appears after my lord Russell was clapt into the Tower) that sure his son could never be in any such plot as that, or suspected for it, and that he knew nothing against him, or any body else, of such a barbarous design? and yet he knew, if he swore true, that my lord Russell was guilty of such a barbarous design: that nothing but the lord Howard's duty to God, the king, and the country, could prevail with him to give it in evidence against a person for whom he had so great an affection as he had for my lord Russell. How was it consistent with the truth of his evidence what he said to Mr. Howard, that he knew nothing of any man's being concerned in that business, and particularly of my lord Russell, whom he highly commended and said, he thought the lord Russell unjustly suffered; or with what he said, to Dr. Burnet with hands and eyes lift up to heaven, which is as much an appeal to God as may be, that he knew nothing of any plot, nor believed any? It was an idle evasion to say, when he spoke of my lord Russell, he meant my lord Russell was not guilty of the design of murdering the king, (for which that man, as he said, was committed, meaning Walcot, the lord Russell, or any other person) for he is still at liberty to explain himself, and I am apt to think they were all committed by warrants of the same form. I know not how dextrous he is at paring an apple, but he must be an excellent logician that can reconcile the truth of his evidence and sayings. The truth is, a man that has those niceties in his head ought to have no credit; for no man knows whether he understands what he says aright, and I am apt to think his lordship could shew, that he did not intend what he said at my lord Russell's trial in the sense it was understood by the court or the jury. To say, that he was to out-face the thing for himself and his party, was as vain; (for besides that I think he was of no party, because, as my lord Russell said, he had the luck to be trusted by none) where was the sense of making those protestations to persons who could do him no good, and would do him no harm, both which my lord Pemberton could; and therefore it was not alike? It is true, the attorney-general commends the lord Howard as a person of great credit amongst the party, and insinuates the lord Grey was left out of the cabal for his immorality, and the lord Howard was taken in his place. But to pass from the general of his evidence to the particulars of it, for about two leaves in the print of it; it is a discourse between my lord Shaftsbury and him, wherein he makes my lord Shaftsbury have a wonderful confidence in him, and discovers all the design to him, and what number of men he had at command; but who they were or what they were, was never yet discovered, and yet the lord Howard had not at that time been concerned in the matter, nor did then assent: he very prudently was resolved to see whether it was likely to take effect or not, before he would enter on it. It was indeed a matter of great wonder to those who knew my lord Shaftsbury, and knew what opinion he had of the lord Howard from the time he discovered that the lord Howard frequented the duchess of Portsmouth, which was before Fitzharris's trial, (though after that

trial the matter was publicly owned, which was before suspected by most known to the lord Shaftsbury) that he should so readily trust the lord Howard with the secret, who was unconcerned in the management before, as he says himself, and yet secreted himself from the duke of Monmouth and my lord Russell, who were equally guilty, if what was sworn was true I cannot but observe, that in all the time of the lord Shaftsbury, the lord Howard was no otherwise concerned in the pretended design, but in raising difficulties, and being in great fear lest there should be a rising or an attempt upon the king's person: and if he said true, he was the man that put off the intended risings, and likewise the intended design on the king's person: insomuch, that I think he was so far from standing in need of a pardon for treason, that he deserved a considerable reward, if it were for nothing else than for his fearing the design was discovered by the proclamation against bonfires, which, as he said, put off the rising intended to be the 17th of November; and yet he and others being afraid, the middle of January they erected themselves into a cabal of six persons, of which there is but one person in all his narrative he pretends to have spoken to about that matter before, which is the duke of Monmouth, and but one more he pretends even by hearsay to be concerned in it before, which is my lord Russell. How improbable therefore was it, that those six persons should, as it were in sight, put themselves upon such a dangerous design, especially considering the reason he gives for it, which was their fears, that what had been transacted was, or might be discovered? This likewise is observable, that from the 30th of September, the time the sheriffs entered upon their office, to the 17th of November following, he is very exact as to the time of each matter, when there was no person could contradict him; for my lord Shaftesbury was dead, Walcot was convicted, and the duke of Monmouth was gone, who are all the persons mentioned to be concerned in that time: yet when he comes to speak of the matter in which my lord Russell was concerned, then he says it was about the middle of January, about ten days after, about six weeks after, about three weeks, and five weeks; for had he been precise in the times, he might have been disproved in the meetings he gave evidence of: and it was much his memory was so very good as to the former times, to be so very precise in them as he was, and so very defective in the latter times; and yet those times do not make up the space of between the middle of January and the time the trial, by many weeks, unless you will give large allowances to the word 'about;' an exception which was taken to Mowbray's evidence, though he rectified it by his account in his almanac; but it would not be admitted, though Colledge very sensibly desired of the court, for justice sake, to look on the almanac, to see whether it was newly writ, as if done for that purpose.

Besides, the improbability if such a thing was in hand, as the lord Howard pretended, for him to run into the country, and then to the Bath, when the matter was just come to a crisis, as it were, shews him, if he swore true, rather a madman than a traitor.

But the usage of the king's counsel and the court towards the prisoner was very unjust and unfair; they permitted my lord Howard to go on with a long story of him and my lord Shaftsbury, at which, when my lord Russell took exceptions, the chief justice, it is true, said it was no evidence; yet the attorney-general bidding him go on in the method of time, he went on where he left off, intermixing stories of designs, and of attempts by other persons upon the king's person, to exasperate the jury, as my lord Russell said rightly, against him; a thing which no counsel durst have done, and no court would have suffered in any other case, nor even in that would the court or counsel suffer it for the prisoner. How was my lord Anglesey checked when he began to tell what my lady Chaworth said, and Mr. Edward Howard when he did not speak of his own knowledge! How unjust was it for the king's counsel to repeat all the evidence the lord Howard gave, when they summed it up, even that which the court told them before was not evidence! How unjust was the insinuating of the death of my lord of Essex, as evidence against my lord Russell! And why did not the court in summing up the evidence take notice of the liberty the witnesses and counsel had taken, and have told them what was not evidence? No other reason can be given than what Colledge said at his trial, upon his observation of Fitzharris's business and his own, that the matter was not to stop at him

BESIDES the preceding Tracts, it seems from the Biographia Britannica, article Russell, that there were published concerning lord Russell's trial, "Animadversions on the late Speech and Confession of the late William lord Russell;" and also "Considerations upon a printed sheet, intitled, The Speech of the late lord Russell to the Sheriffs, together with the Paper delivered by him to them at the place of Execution, July 21st, 1683." It is said that the writer of this was the well known Roger L'Estrange, and that Tillotson's Letter to lord Russell was annexed to it. This Letter, upon the unlawfulness of resistance, is also printed by Harris, in his Life of Charles the Second, p. 254, from Birch's Life of Tillotson, (p. 109), in which work are mentioned some particulars of lord Russell's tenacity of his opinion respecting that matter. Tillotson's Letter is a short and meagre performance.

Of its likelihood to convert lord Russell, the reader shall have an opportunity to judge for himself. The Letter is as follows:

"My lord; I was heartily glad to see your lordship this morning, in that calm and devout temper at receiving the sacrament. But peace of mind, unless it be well grounded, will avail little, and because transient discourse many times hath little effect, for want of time to weigh and consider it; therefore, in tender compassion of your lordship's case, and from all the good will that one man can bear to another, I do humbly offer to your lordship's deliberate thoughts these following considerations concerning the point of resistance, if our religion and rights should be invaded, as your lordship puts the case; concerning which, I understand, by Dr. Burnet, that your lordship had once received satisfaction, and am sorry to find a change. First; that the Christian Religion doth plainly forbid the resistance of authority. Secondly, that though our religion be established by law (which your lordship argues as a difference between our case and that of the Primitive Christians); yet, in the same law which establishes our religion, it is declared, that it is not lawful, upon any pretence whatsoever, to take up arms, &c. Besides that, there is a particular law, declaring the power of the militia to be solely in the king. And this ties the hands of subjects, though the law of nature and the general rules of scripture had left us at liberty: which, I believe, they do not; because the government and peace of human society could not well subsist upon these terms. Thirdly; your lordship's opinion is contrary to the declared doctrine of all Protestant Churches. And, though some particular persons have thought otherwise, yet they have been contradicted herein, and condemned for it, by the generality of Protestants. My end in this is, to convince your lordship, that you are in a very great and dangerous mistake: and being so convinced, that, which was before a sin of ignorance will appear of a much more heinous nature, as in the truth it is, and call for a very particular and deep repentance; which if your lordship sincerely exercise upon the sight of your error, by a penitent acknowledgment of it to God and men; you will not only obtain forgiveness of God, but prevent a mighty scandal to the Reformed Religion. I am very loth to give your lordship any disquiet in the distress you are in, which I commiserate from my heart; but am much more concerned, that you do not leave the world in a delusion and false peace, to the hindrance of your eternal happiness. I heartily pray for you; and beseech your lordship to believe that I am, with the greatest sincerity and compassion in the world, your lordship's, &c.

"JOHN TILLOTSON."

To this Letter, Harris has subjoined some remarks made upon it by Johnson, the author of Julian, in his ordinary caustic manner. He has also added quotations from other authors upon the subject, which called forth the remonstrances and exhortations of Tillotson.

In the Introduction to the publication of lady Rachel Russell's Letters, ed. 1792, something more on the topic is collected. In the year 1690, Tillotson consulted lady Rachel Russell as to his acceptance of the archbishopric of Canterbury, which he tells her king William pressed much upon him contrary to his own wishes. The lady answers, "The time seems to be come that you must put anew in practice that submission you have both so powerfully tried yourself and instructed others to." See also as to Non-resistance, a curious anecdote inserted (as printed by Dalrymple from lord Dartmouth's MS. Notes on Burnet) in a Note to the earl of Argyle's Case, vol. 8, p. 1016, of this Collection.

It has been said that Barillon returned to France from his embassy in England very wealthy. This may countenance the conjecture that he had appropriated to himself monies which, in his accounts, he had charged as disbursed to others.

Burnet (Own Times, vol. 1, p. 633, ed. of 1724) tells us, "that when Mr. Charteris, the divine, came by Argyle's desire to attend him previously to his execution, that lord told him he was satisfied in conscience with the lawfulness of what he had done, and therefore desired he would not disturb him with any discourse on that subject: the other, after he had told him his sense of the matter, complied easily with this; so all that remained was to prepare him to die."

The following particulars I transcribe from the Biographia (article Russell) where they are inserted upon the authority, as it appears, of Birch's Life of Tillotson:

"This divine (Dr. Burnet) tells us, that being sent for by his lordship, on Monday July 16, 1683, he thought by the ground which he had gained, in discoursing on the subject of resistance, it would be easy to persuade his lordship, that it was absolutely unlawful; though indeed his lordship went no further at first, than he did at last. However, the doctor thinking that step which his lordship had made, gave further hopes, told the dean [Tillotson] that he believed his lordship was convinced of that point. Lord Russell persisting in his former opinion, notwithstanding the endeavours of the dean and doctor to alter it, added to the speech he was composing, the following passage, not now extant, in the printed copy, 'For my part 'I cannot deny, but I have been of opinion, 'that a free nation, like this, might defend their 're igion and liberties, when invaded and taken "from them, though under pretence and colour 'of law. But some eminent and worthy di'vines, who have had the charity to be often 'with me, and whom I value and esteem to a 'very great degree, have offered me weighty 'reasons to persuade me, that faith and pa'tience are the proper ways for the preserva-

'tion of religion; and the method of the gospel is to suffer persecution, rather than to use 'resistance. But if I have sinned in this, I 'hope God will not lay it to my charge, since 'he knows it was only a sin of ignorance.' This being read to the dean, on Friday morning July the 20th, he was sorry to find it so defective; but not having then leisure to speak to lord Russell of it, he returned in the afternoon, and pressed his lordship to deliver himself more fully in that matter, and gave him a paper concerning it; and as he came out, meeting Dr. Burnet, desired him to urge the point home to his lordship, and either to carry him farther, or strike out the whole paragraph above-cited, since the conclusion of it was so cold; and wished that the first part of it might be quite left out. The doctor, accordingly, discoursing lord Russell again upon the affair, his lordship answered, that he could not say a lie, and he was sure the doctor would not desire it; and he was sure if he went further, he must needs lie. He said, that he had not leisure now to study politics: that the notion which he had of the laws, and of the English government, was different from that of the two divines; yet he said, so far did he submit to them, and to the reasons which they had offered him, that he was willing to go so far as he had done, but he could not go farther without being disingenuous. And when at last the doctor proposed the suppressing of the whole paragraph, he was very well satisfied; and said, that his chief reason for putting it in, was to prevent any inconveniency that might arise to them. So it was struck out. But he said often, that whatever his opinion might be, in cases of extremity, he was against these ways; and ever thought a parliamentary cure was the proper remedy for all the distempers of the nation; and said, that he and a few more. (I think he said half a dozen, or half a score,) had taken much pains to moderate people's heats for three years together, and had ever persuaded their friends to be quiet, and wait for a parliament."

See, too, Mr. Fox's account of what passed between the duke of Monmouth and Turner, Kenn, Hooper and Tennison, during their attendance to prepare him for his execution. Note; it appears from the Biographia that the whole of Burnet's Journal is printed in the General Dictionary.

Echard, in the third edition of his History, vol. 1, p. 1035, says:

"Since the first edition of this volume, I obtained a narrative from a great man, taken from archbishop Tillotson's own mouth, which I thought best to be placed by itself. It informs us, That about two days before the lord Russell's death, Dr. Tillotson going to attend upon that unfortunate lord, was suddenly stopt by Dr. Burnet in the street, who told him 'They 'had now some good hope of saving his lordship's life: The main impediment of which 'being his avowed principle, That resistance 'was in some cases lawful, he had convinced 'that lord of his mistake, and that he was 'ready to own his error in it. Therefore he 'desired Dr. Tillotson to go immediately to 'the lord Halifax and acquaint him with it; 'who would thereupon go again to the 'king, and use his utmost endeavours to 'obtain his pardon.' This being pressed with some warmth and vehemence, Dr. Tillotson went accordingly, and delivered his message to the lord Halifax. But calling upon the lord Russell in Newgate upon his return, he was very much surprised and troubled to find that his lordship was under no such conviction as Dr. Burnet had hastily believed, and reported him to be.

"Dr. Tillotson, vexed and uneasy at what he had done, and willing to clear himself of it after the best manner, resolved the next day to try what he could do to bring his lordship to some change in his opinion. But it being the last day before his appointed execution, and not knowing whether he should be able to see him alone, he wrote the letter, which was soon after printed; and took it in his pocket; resolving if he could not discourse with him, to desire him to read, and consider the letter he should give to him.

"He found his lordship alone, told him what he had done, and gave the letter to him, who read it with great deliberation; and acknowledged to him, 'That he had therein 'offered more to convince him, than he had 'ever met with before: That he was now satisfied nothing but a case of a very extraordinary nature could justify subjects in taking 'up arms against their prince: That he was 'fully of opinion no such cause had been given 'by the king, to justify any such attempt 'against him. But still he thought such circumstances there might be, in which it would 'be lawful for them to resist.' Being asked by the doctor, 'What those cases were,' he answered, 'He had not considered the matter so 'far and fully; and he had other things 'more proper to be thought on at that time.'

"On that same evening dean Tillotson waited again upon the lord Hallifax, to account to him, what mistake he had been led into, and what he had done upon it: And the better to justify himself, shewed him the very letter he had written to the lord Russell. While that lord was reading it, sir Thomas Clarges came in; and after a little time the dean took leave, my lord Hallifax putting the letter into his pocket, and promising to be answerable for it. But in the mean time sir Thomas not only found opportunity to read it, but to take a copy of it; and from that copy (and I think by his means) it was very soon after printed.

"On the evening of the next day, when the lord Russell was executed, dean Tillotson was sent for to the cabinet council, and carefully examined touching that lord's behaviour before and at his death. The king particularly commended the dean's letter, and wondered, 'What 'could be said to it.' He told his majesty the

lord's opinion, 'That such circumstances there 'might be, in which it would be lawful to re- 'sist;' and further intimated as though it was his own, 'That it was not impossible to find out 'a case of exception, though he would not pre- 'sently pretend to specify it.' The duke of York, who was willing to believe there were none, with some warmth urged him to name the case. And not being satisfied, the king more mildly said, 'Brother, the dean speaks 'like an honest man, press him no further.' After which he told his majesty, That the lord Russell had declared to him, 'That he was 'persuaded the king had never done any 'thing to justify any one in rebellion against 'him: That he had never any such thought 'himself, and kept company with those unhap- 'py men, only to preserve the duke of Mon- 'mouth from being led into any rash undertak- 'ings by them, and more particularly the earl 'of Shaftsbury.' Being then asked, 'Why the 'lord Russell did not discover their designs to 'the king?' His answer was, That that lord had said, 'He could not betray his friends, nor 'turn informer against them, while he saw 'there was no danger: But if things had come 'to a crisis, he would have contrived some no- 'tice to have been given to the king of it; and 'in case of violence, would himself have been 'ready to oppose them with his sword in his 'hand.

"The king himself confirmed the truth of the greatest part of this account, and in conclusion said, 'James (meaning the duke of 'Monmouth) has told me the same thing.'"

300. The Trial of Colonel ALGERNON SIDNEY,* at the King's-Bench, for High Treason: 35 CHARLES II. A. D. 1683.

ON November the 7th 1683, Algernon Sidney, esq. was by Habeas Corpus† brought to the bar of the court of King's bench, and the clerk of the crown having read the return, Mr. Attorney General informed the court there was an indictment against the prisoner, and prayed he might be charged with it.

Cl. of Cr. Algernon Sidney, Hold up thy hand. [Which he did.]

Midd. ss. 'The jurors for our lord the king 'upon their oaths do present, That Algernon 'Sidney, late of the parish of St. Martin in the 'fields, in the county of Middlesex, esq. as a 'false traitor against the most illustrious, most 'excellent prince, our lord Charles 2, by the 'grace of God, king of England, Scotland, 'France and Ireland, and his natural lord, not 'having the fear of God in his heart, nor weigh- 'ing the duty of his allegiance, but moved and 'seduced by the instigation of the devil, utterly 'withdrawing the cordial love, and true, due 'natural obedience, which a true and faithful 'subject of our said lord the king should bear 'towards him the said lord the king, and of 'right is bound to bear; contriving, and with 'all his strength intending to disturb the peace 'and common tranquillity of this kingdom of 'England, and to stir up and move war and re- 'bellion against the said lord the king, and to 'subvert the government of the said lord the 'king in this kingdom of England, and to de- 'pose and deprive the said lord the king, from 'the title, honour and regal name of the im- 'perial crown of his kingdom of England, and 'to bring and put the said lord the king to death 'and final destruction, the thirtieth day of June 'in the five and thirtieth year of the reign of 'our lord king Charles 2, now king of Eng- 'land, &c. and divers other days and times, as 'well before as after, at the parish of St. Giles 'in the fields, in the county of Middlesex, ma- 'liciously and traiterously, with divers others 'traitors, to the jurors aforesaid unknown, did 'conspire, compass, imagine and intend to de- 'prive and cast down the said lord the king, his 'supreme natural lord, not only from the regal 'state, title, power and rule of his kingdom of 'England; but also to kill, and bring and put 'to death the same lord the king, and to change, 'alter and utterly subvert the ancient govern- 'ment of this his kingdom of England, and to 'cause and procure a miserable slaughter 'among the subjects of the said lord the king 'through his whole kingdom of England, and 'to move and stir up an insurrection and re- bellion against the said lord the king, within this kingdom of England. And to fulfil and perfect those his most horrid, wicked and dia- 'bolical treasons, and traiterous compassings, imaginations and purposes, the same Algernon Sidney, as a false traitor, then and there, and 'divers other days and times, as well before as after, maliciously, traiterously and advisedly, did assemble himself, meet and consult with the aforesaid other traitors to the jurors afore- 'said unknown, and with the same traitors did 'treat of, and for those his treasons and trai- 'terous compassings, imaginations and pur- poses, to be executed and fulfilled And that the aforesaid Algernon Sidney, as a false trai- 'tor, maliciously, traiterously and advisedly, 'then and there, and divers other days and times, as well before as after, upon himself, did assume, and to the aforesaid other traitors did promise that he would be aiding and as-

* See the Introduction to the Trials for the Rye-House Plot, p. 514, of this volume, and the Extracts from Narcissus Luttrell's MS. at the end of this Trial.

† "This Habeas Corpus was granted the day before, which was before the indictment was found by the grand jury, for it was not presented to them till after he was brought to the hall." Note in former Edition.

'sisting in the execution of their treasons and 'traiterous compassings, imaginations and pur'poses aforesaid, and to fulfil, perfect and re'duce to effect those their most horrid treasons 'and traiterous compassings, imaginations and 'purposes aforesaid, the same Algernon Sid'ney as a false traitor, then and there, falsly, 'maliciously, advisedly and traiterously did send 'one Aaron Smith into Scotland to invite, pro'cure, and incite divers evil-disposed subjects 'of our said lord the king, of his kingdom of 'Scotland, to come into this kingdom of Eng'land, to advise and consult with the aforesaid 'Algernon Sidney, and the aforesaid other un'known traitors in this kingdom of England, of 'aid and assistance to be expected and supplied 'from the kingdom of Scotland to fulfil, per'fect, and to reduce to effect those their most 'wicked, horrid and traiterous treasons afore'said. And that the aforesaid Algernon Sid'ney to fulfil and perfect those most wicked, 'horrid and devilish treasons, and traiterous 'compassings, imaginations and purposes 'aforesaid; and to persuade the subjects of the 'said lord the king of this kingdom of England, 'That it is lawful to make and stir up an in'surrection and rebellion against the said lord 'the king that now is, the said thirtieth day 'of June, in the five and thirtieth year of the 'reign of the said lord the king that now is, at 'the parish of St. Giles in the field, in the 'county of Middlesex, falsly, unlawfully, wick'edly, seditiously and traitorously, did make, 'compose and write, and caused to be made, 'composed and written, a certain false, sedi'tious and traiterous libel, in which said false, 'seditious and traiterous libel, among other 'things, is contained as followeth in these 'English words, viz. "The power originally in 'the people of England is delegated unto the 'parliament, he (the most serene lord, Charles '2, now king of England, meaning) is subject 'unto the law of God, as he is a man to the 'people, that makes him a king, inasmuch as 'he is a king, the law sets a measure unto that 'subjection, and the parliament judges of the 'particular cases thereupon arising, he must 'be content to submit his interest unto theirs, 'since he is no more than any one of them in 'any other respect than that he is, by the con'sent of all, raised above any other; if he doth 'not like this condition, he may renounce the 'crown; but if he receive it upon that condition '(as all magistrates do the power they receive) 'and swear to perform it, he must expect that 'the performance will be exacted, or revenge 'taken by those that he hath betrayed." And 'that in another place in the said false, seditious 'and traiterous libel, among other things, these 'false seditious and traiterous English sentences 'are contained (that is to say), "we may there'fore change or take away kings, without break'ing any yoke, or that is made a yoke which 'ought not to be one, the injury is therefore in 'making or imposing, and there can be none in 'breaking it," Against the duty of his allegi'ance, against the peace of the said now lord the 'king, his crown and dignity, &c. And against 'the form of the statutes in this case made and 'provided, &c.'

How sayest thou? Art thou Guilty of this High Treason whereof thou standest indicted, or Not Guilty?

Col. *Sidney.* My lord, I find an heap of crimes put together, distinct in nature one from another, and distinguished by law; and I do conceive, my lord, that the indictment itself is thereupon void, and I cannot be impeached upon it.

L. C. J. (Sir George Jefferies.) We are not to admit of any discourses, till you answer the question, whether you be Guilty or not Guilty.

Mr. *Att. Gen.* (Sir Robert Sawyer) If he will demur, my lord, we will give him leave.

Col *Sidney.* I presume your lordship will direct me, for I am an ignorant man in matters of this kind, I may easily be surprized in it, I never was at a trial in my life of any body, and never read a law book.

L. C. J. Because no prisoner under your circumstances is to have counsel, but in special cases to be assigned in matters of law, the court is bound by their oaths and duty of their places that they shall not see any wrong done to you.* But the business that we are to tell you now is, you are to plead Guilty, or not Guilty, or demur, which is a confession in point of law.

Sidney. Under favour, my lord, there may be indictments that are erroneous, and if they are erroneous and vitious, they are null, and ought not to be answered to.

Mr. Just. *Withins.* If you please to demur to it, you shall have liberty to make any exceptions.

Sidney. I do not demur, it is only exceptions. I think in matters of life, a man may give in his exceptions to the bill, and plead not Guilty afterwards. I am sure in sir Henry Vane's case, the court said it, and offered him to do it;† that which, under favour, I hope to do.

L. C. J. You must plead or demur

Sidney. My lord, if I put in exceptions to the bill, I do not plead until those exceptions are over-ruled. This was in the case of sir Henry Vane.

L. C. J. Sir, I must tell you, you must either plead or demur.

Sidney. My lord, there are in this indictment some treasons, or reputed treasons, that may come within the statute of the 13th of this king, which is limited by time, the prosecution must be in six months, and the indictment within three. Now, my lord, if that this business that is mentioned, be above six months before my commitment, or above three before the indictment, I think, under favour, I ought not to answer to these matters.

L. C. J. You are mistaken in the law. That will be saved when the fact comes to appear.

* See Notes to the Cases of Don Pantaleon Sa, vol. 5, p. 466, and of Twyn and others, vol. 6, p. 516, of this Collection.

† See as to this, vol. 6, p. 143.

If they alledge the thing to be at a time, which according to that allegation would maintain the indictment, if upon the trial, it appear otherwise, the court is bound to take notice of it when you come to your trial but we are not bound to examine that before you have pleaded.

Sidney. My lord, every body will acknowledge that there have been, or may be, vitious indictments. Now if I [illegible] to an erroneous indictment, and am acquitted, [illegible] may be indicted again. Bills of attainder have been upon errors in original indictments, as that of the duke of Somerset. Now if [illegible] here several things distinct in nature [illegible] law that are put together [illegible] make a positive answer to [illegible] one should tell me, that I [illegible] others by word or by [illegible] the king, I must say, I did it or I [illegible] any one say I have listed men [illegible] acts undertake to prove I have do[illegible] say I have done it or I have not [illegible] don't find any thing specified, or [illegible] what statute I am indicted. I pray I may [illegible] the record.

L. C. J. That we cannot do. You shall hear it read again if you will. If you think it to be a void indictment, demur to it if you will.

Sidney. My lord, I desire you to accept of this. [Shewing a parchment.]

L. C. J. What is it? put in what plea you shall be advised, but if you put in a special plea, and Mr. Attorney demur, you may have judgment of death; and by that you waive the fact.

Sidney. I cannot make any objection to the bill after I have pleaded Not Guilty, for I accept the bill thereby to be good.

L. C. J. If you can assign any matter of law do. But otherwise what a kind of thing would it be? all criminals would say, in all cases I doubt whether the bill be good or bad. And after I have thus considered of it I will plead. You are misinformed, and this the court tells you as a duty incumbent on them.

Just. Withins. If you demur, and shew what your causes are, we will assign you counsel.

Sidney. I desire you will not try me, and make me to run on dark and slippery places I don't see my way.

L. C. J. Don't apprehend yourself to be so, as if the court would run you on any inconvenience. But they are bound to see the methods of justice preserved, they are those that you, and all the king's subjects are bound to conform to. If any one of us were in the same condition we must observe the same methods of law.

Cl. of Cr. Art thou Guilty or Not Guilty?

Sidney. Then pray, my lord, will you tell me this: is it true, that a man, how vitious soever an indictment is, must answer or demur to it?*

L. C. J. He must either answer or demur.

Sidney. Are there no exceptions to be admitted?

L. C. J. None. And if you don't do the one or the other, judgment passes, as if you had pleaded Guilty.

Sidney. Here is a Plea.*

Mr. Just. Withins. Will you stand by it? Consider yourself, and your life, if you put in

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* See sir Henry Vane's Case, vol. 6, pp. 132, 133, 13[illegible], 143. Oates's Case, May 8th, 1685. Charnock's Case, A. D. 1696, in this Collection.

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* REX *versus* SIDNEY, for High Treason.

Mich. 35 Car. 2. B. R.

The Plea (drawn by Mr. Serjeant Rotheram) which he offered to the Court.

"Prædict' Algernon Sidney dicit quod per st[illegible] in parliamento inchoat' et tent' apud W[illegible] [illegible] octavo die Maii anno regni Domini [illegible] decimo tertio, et continuat' usque [illegible] Julii tunc prox' sequen', et [illegible] die Julii adjournatum usque [illegible] Novembris tunc prox' sequen', [illegible] 'An Act for the Safety and Preservation of his Majesty's Person and Government against Treasonable and Seditious [illegible] Practices and Attempts' inter alia ordinat' et inactitat' fuit per autoritatem parliamenti prædict' quod nulla persona sive personæ, [illegible] prædicti, incurreret, aliquas [illegible] in actu prædicto mentionat', nisi [illegible] vel ipsi prosecut' [illegible] infra sex mensis prox' post offens' commiss', et indict' esset superinde infra tres menses post talem prosecutionem, aliquo in statuto prædict' content' in contrarium non obstante. Et prædictus Al[illegible] non ulterius dicit, quod ipse prosecut' fuit et commissus prisonæ Turri de London, pro offens' in indictamento prædict' mentionat', [illegible] die [illegible] ultimo prætérito, et non antea, et ibidem continue prisonar' hucusque, et quod ipse prædict' Algernon non fuit indictat' pro aliquo vel aliquibus offens' in indictamento prædict' mentionat' infra tres menses prox' post prosecutionem prædict'. Et hoc prædict' Algernon parat' est verificare, unde petit judicium, si ipse prædict' Algernon quoad aliquod crimen sive offens' in indictamento prædict' mentionat', quod crimen vel offens' non fuit alta proditio ante confectionem statut' prædict', responder[illegible] debeat. Et quoad omnes proditiones, crimina, et offens' indictamento prædict' mentionata, quæ non fuere vel fuit alta proditio ante confectionem statuti prædict', idem Algernon dicit, quod per statutum in parliamento tento apud Westm' in com' Middlesex in festo sancti Hilarii, anno regni Domini Edwardi nuper R[illegible] gis Angliæ tertii, anno regni sui vicesimo quinto editum, intitulatum, 'A Declaration which Offences shall be judged High-Treason,' inter alia, inactitatum fuit autoritate ejusdem parliamenti, quod si ullus casus suppositus esse proditio, qui non specificatus in eodem statuto, accident coram aliquibus Justitiariis, Justitiarii moram facient (Anglice *shall tarry*) sine aliquo progressu ad judicium (Anglice *going to judgment*) de prædicta proditione usque causa monstretur et declaretur coram Rege et parliamento suo. Quodque per statutum in par-

that plea, and Mr. Attorney demurs, if your plea be not good, your life is gone.

Sidney. Pray, my lord, give me a day to consider of it.

L. C. J. No, we must not introduce new methods of forms for any body. The same case that is with you may be with other people.

Sidney. My lord, I do not pretend to any thing but what is law, and due to every man upon English ground. I would be very sorry to do that which may be hurtful.

L. C. J. You have the rule of the court. You must do one or the other. Call him to it.

Sidney. I desire this may be read. [Shewing the same parchment.]

L. C. J. It shall not be read unless you put it in as a plea.

Solicitor General. I must do my duty. Mr. Williams exceeds his liberty, he informs the prisoner several things.

Mr. *Williams.* I only said, if it was a plea, put it in, Mr. Attorney can hear all I say. [Whereupon Mr. Williams was reproved by the lord chief justice.]*

Sidney. I only give it as exceptions to the bill.

Cl. of Cr. Art thou guilty or not guilty?

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liamento tent' apud Westm' in comm' Midd', quinto die Octobris, anno regni Dominæ Mariæ nuper Reginæ Angliæ primo, intitulatum, 'A Repeal of Several Treasons, felonies and 'Præmunires,' inactit' fuit, inter alia, autoritate ejusdem parliamenti, quod abinde nullum factum vel offens' existen' per actum parliamenti, vel statut' fact' proditio per verba script' notationem (Anglice *cyphering*) fact', aut aliter quocunque capt' habit' census (Anglice *deemed*) vel adjudicat' esse alta proditio, nisi tantum tal' quæ declarantur et exprimuntur esse proditio in vel per actum parliamenti, vel statut' factum in anno vicesimo quinto regni prænobilis Regis Edwardi tertii tangen' vel concernen' proditiones vel declarationes proditionis et null' al', nec quod aliquæ pœnæ mortis, pœnalitates, vel forisfactur' in aliquo modo sequuntur (Anglice *ensue*) vel sint alicui peccatori (Anglice *offender*) vel peccatoribus (Anglice *offenders*) pro facien' vel committen' aliquam proditionem aliter quam tal' quæ in statuto prædicto facto, in dicto anno vicesimo quinto regni dicti Edwardi Regis ordinat' et provis', aliquo actu vel actus parliamenti, statut', vel statuta ad aliquod tempus antea habit' vel fact' post dictum vicesimum quintum annum dicti nuper Regis Edwardi tertii, vel aliquam, al' declarationem vel materiam in contrarium aliquo modo non obstante. Et prædictus Algernon dicit, quod ipse non est culpabilis de aliqua vel aliquibus proditione vel proditionibus in indictamento prædicto mentionat' quæ specificatur vel specificantur in statuto ultimo mentionato modo et forma prout in indictamento prædicto mentionat'. Et de hoc ponit se super patriam."

* By the favour of Mr. Charles Watkin Williams Wynn, I have had permission [November, A. D. 1810] to cause to be copied for this Work several papers which had belonged to his ancestor, sir William Williams (He was created a baronet by king James the Second in the year 1680), who was the Mr. Williams mentioned in the text. One of these is an Order signed by lord Sunderland, and dated, as it seems, Octr. 29th, 1683, allowing Mr. Thompson, Mr. Rollinson, [qu. Rawlinson] Mr. Bamfield, Mr. Williams and Mr. Rotheram, as counsel, and Mr. Wynn as solicitor for Mr. Sidney, for the purpose, I conjecture, of assisting him in preparing for his trial.

Another of sir William Williams's Papers is the panel of Jurors, which (with some allowance for errors of transcription and impressions) appears to include the twelve who tried col. Sidney. It is as follows:

The Names of the Jurors int. Dom. Regem et Sidney.

Sir Reginald Foster, of Cripplegate, bart.
Sir John Musters, of Hornsey, knt.
Peregr. Berty, of St. Martyn-in-the-Fields, esq
Richard Morley, of the same, esq.
Jas. Supple, of St. Martyn-in-the-Fields, gent
John Augier, of Westminster, gent.
Richard Fisher, of the same, gent.
John Kirke, of the same, gent.
Christopher Granger, of the same, gent.
John Niccoll, of Finchley, gent.
Wm. Cleeve, of Cripplegate, gent.
Richard White, of the same, gent.
Sir C. Gerrad, of Harrow on the Hill, bart.
Sir Richard Fisher, of Clerkenwell, bart.
Sir Robert Dacres, of Clerkenwell, bart.
Sir J. Kirke of St. Martyn's in-the-Fields, knt.
John Wells of Maribone, gent.
Samuel Lynn, senr. of Clerkenwell, gent.
Michael Todd, of the same, gent.
Wm. Dynn, of the same, gent.
Lawrence Wood, of Holbourne, gent.
John Powell, of the Strond, gent.
Hugh Hamersley, of the same, gent.
John Cannon, of St. Giles in the Fields, gent
Sir John Brattle, of Enfield, knt.
Sir Richard Downton, of Isleworth, knt.
Sir Wm. Hill, of Teddington, knt.
Ralph Hawtrey, of Rislipp, esq.
Francis Knowles, of Covent Garden, esq.
Thomas Hinton, of St. Giles-in the Fields, gent
John Merridell, of the same, gent.
John Bayley, of the same, gent.
Abel Andrews, of Edmonton, gent.
Ruben Bourne, of Edmonton, gent.
Emery Argus, of Westminster, gent.
Rd. Cooper, of St. Martyns in-the-Fields, gent
Thomas Rowe, of Hornsey, esq.
John Bathurst, of Edmonton, esq.
Richard Pagitt, of Westminster, esq.
Nehemiah Arnold, of the same, esq.
William Freeman, of Hatton Garden, esq.
William Avery, of Enfield, esq.
Francis Stevens, of Westminster, esq.
T. Phelpps, of St. Martyns-in-the-Fields, gent.
John Smalbone, of the same, gent.
Thomas Whitfield, of the same, gent.
John Haynes, of the same, gent.

Sidney. If any one should ask me any particular thing, I could tell how to answer.

L. C. J. He asks you a particular thing. It is the duty of the court to pronounce judgment, if you do not plead.

Charles Monke, of the same, gent.
John Sharp, of Wapping, esq.
John Clerke, of Chiswick, esq.
Wm. Waite, of St. Clements Danes, gent.
J. Bignal, sen. St. Martyns in the-Fields, gent.
George Clisby, of the same, gent.
Nicholas Baxter, of the same, gent.
Thomas Roberts, of the same, gent.
John Hazard, of St. Clements Danes, gent.
Jeremiah Plainer, of the same, gent.
Wm. Reeves, of the same, gent.
Wm. German, of the same, gent.
Thomas Claxton, of Harrow, esq.
Charles Prior, of Highgate, esq.
Thomas Curtis, of St. Clements Danes, esq.
—— Bradshaw of the Strond, esq.
Tho. Kensey, of St. Giles, in-the-Fields, esq.
Richard Taylor, of Chiswick, esq.
Wm. Groves, of St. Clements Danes, gent.
John Bert, of the Savoy, gent.
Samuel Lynn, junr. of Holborne, gent.
Richard Bromfield, of the same, gent.
Edward Hampstead, of St. Giles, gent.
Benjamin Boltby, of the same, gent.
Christopher Chambers, of the same, gent.
Arthur Blithe, of Paddington, gent.
John Leeson, of the Strond, gent.
Thomas Elton, of Stepney, gent.
Nicholas Grice, of Hesson, esq.
Simon Smith, of Westminster, esq.
Bartholomew Parr, of East Smithfield, gent.
Francis Child, of Acton, gent.
John Davis, of St. Martyn's, gent.
John White, of the same, gent.
Steven Phillipps, of the same, gent.
Richard Foster, of Westminster, gent.
Thomas Graves, of the Strond, gent.
John Singleton, of the same, gent.
Thomas Tatter, of the same, gent.
Robert Longland, of St. Giles, gent.
James Blagrave, of the same, gent.
Wm. Abel, of the same, gent.

Mr. Williams took much pains in the instruction of Mr. Sidney for his trial, as may be seen by the following extracts from the papers communicated by Mr. Wynn; in which some repetitions will be found.

The Stat. of first and second of Philip and Mary* doth repeal all mesne statutes in treason to the statute of Edward the third,† and doth fortify that Statute, which doth manifest the great regard that was had to this Statute, in all ages, and the mesne Statutes which make some provision for treason in the time of Hen. 4, and H. 8, and at other times which are not declared by the Statute of Edward the Third, shew the necessity of making particular laws for treasons not declared in the Statute of Edward the Third. And not safe to trust ordinary courts of justice, with the construction of treasons not expressly declared by the Stat. of Edw. the Third.*

In order to the Tryall

You may challenge 35 of the jury returned to trye you without any cause.

You may challenge as many more as you shall please shewing cause for such challenge.

Want of freehold in a juror returned in the county of Middlesex is a good cause.

And if any of the grand jury that found the indictment against you be returned upon the jury of life and death it is good cause of challenge to that juror.†

For that purpose a petition is to be prepared to desire a copy of the grand jury and of the pannell of the jury for the tryall for life and death.

Consider of exceptions to witnesses.

And when you make your exceptions pray they may be argued by counsell if the court shall reject them.

Desire all evidence of hearsay from witnesses may not be given, and suffer it not to be given, but desire the Court to stopp that evidence.

Watch the king's counsell in summing or argueing the evidence against you, [that] they do not offer any thing that was not proved, and stop them if they do.

Challenge Jurors.

Thirty-five of the jury may be challenged without shewing any cause.

And any other juror may be challenged shewing cause for such challenge.

If the juror have not 40*s.* freehold in the county of Middlesex a good cause of challenge.

So it is if he be returned of the jury by the nominac'on of the prosecutor or of any other person that sollicites against the prisoner.

* This should rather be the stat. 1 Mary, c. 1.

† Mr. Christian (note 10 to 4 Blackst. Comm. 89) notices that this had been done far more effectually six years before, by st. 1, Ed. 6, c. 12, and he proceeds to observe that the object of the needless repetition in the time of queen Mary, seems to have been to continue to Mary the popularity which had been so justly gained by her brother.

Sidney. Why then, if you drive me upon it, I must plead.

L. C. J. I am sure there is no gentleman of the long robe would put any such thing into your head. There was never any such thing done in capital matters.

Sidney. My lord, I am there indicted for conspiring the death of the king; I have not conspired the death of the king: I am there indicted

* See Coke's 3d Inst. 22, 23, 24. 1 Hale's P. C. 108, 259.

† See Oates's case, 1685, in this Collection.

for levying of war, I have not done that. I am indicted for having invited in others of another nation, I have not done that neither. I am there indicted to have written a seditious libel to stir up the spirits of the people against the king, I have not written any thing to stir up the people against the king ———

L. C. J. We are not to hear this, &c.

If he was upon any other jury, &c. on the like indictment where the same witnesses were examined for the king who were witnesses to this indictment, it may seem cause to sett aside such juror if he found for the king.*

Because he hath believed the witnesses, and therefore doeth not stand so indifferent to trye the prisoner upon the testimony of them witnesses.

The time to challenge the jurors is when they are called to the booke to take their oaths after they have appeared.

The prisoner is to have the copy of the pannel of the jury in his hand.

Except against the Witnesses.

When the witnesses are called and appeare and come to the booke to be sworn,

Except to the witness before he is sworn.

That the witness is outlawed for high treason, and therefore ought not to be admitted a witness against the prisoner.

Produce the copy of the outlawry, and call your witness to prove it a true copy.

And desire counsell may be assigned you to argue. Whether a person so outlawed may by law be admitted a witness against you.

When the witnesses are sworn against you

Observe, that what they sweare shall prove the treasons layed in the indictment against you.

And that the treasons layd in the indictment against you be proved against by two witnesses.

Otherwise you ought to be acquitted by the law.

If the witnesses prove onely treasonable discourses against you, or that you were present where men did speak treason, insist upon it that is not enough to convict you of treason by this indictment or by law.

Insist upon it that no act of treason is proved against you, and therefore you ought to be discharged by law, though words and discourses should be proved against you.

If treasonable discourses and acts of treason be proved against you, then you are to insist that the witnesses, though they are upon their oaths, ought not to be believed by the jury.

Because by their evidence they are traytors.

They sweare to save their own lives.

They have no other way to save their own lives, but by swearing other men out of their lives.

It not believable that such notorious traytors will not add perjuryes to their treason to save themselves.

When all the witnesses are examined against you, call your own witnesses to disprove, if you can, what was proved against you.

At least to prove what may be of your that it is not credible that you should be guilty of treason.

To prove your loyalty to the crown.

Your principle for the government.

Your obligations to the King and his B[illegible]

That you did not appeare in the late Rebellion.

What acts you did to suppress it.

When your witnesses are examined, and you have [illegible] what you have to say in your own defence,

Then the king's counsell will sum up the evidence to the jury.

Observe if they misrepeat any part of the evidence to the jury.

And call to the court to do you right in that matter.

After the Indictment is read

You will be called upon to plead to it.

Advise if the special plea may not be then offered.

After not guilty pleaded,

The jury for your tryall will be called.

As they come to the booke to be sworne upon the jury, then are you to make your challenges.

You may challenge [illegible] without shewing any cause.

You may challenge as many as you shall please shewing cause.

Advise what causes are fit to be insisted upon.

After the jury is sworn and charged to enquire against you,

Upon the indictment and proclamation made for your prosecution,

The king's counsell will open the indictment, and the evidence to meyntayn the indictment against you.

Observe upon their opening what evidence they insist upon, and consider what defence to make as they open to what they open against you.

Then the witnesses will be called against you.

Consider what is proved by the witnesses of their owne knowledge.

What they believe.

What they say by hearsay.

The two last are no evidence against you; therefore carefully watch them in their evidence.

Then consider how much of what they sware to their knowledge is pertinent to prove the treason lay'd in the indictment, though it be though itt [qu. yet if] be treason lay'd in the indictment, a treason not lay'd in the in-

*This no good cause of challenge. See Cranbourne's case, A. D. 1696, in this Collection.

must plead as other people, or else in plain English we will pronounce sentence. We ought to give all men satisfaction that will be satisfied; but if they won't be directed we can't help that.

Sidney. My lord, if you put me upon this inevitable necessity, it lies upon you; I must plead then.

Cl. of Cr. Art thou guilty or not guilty?

Sidney. Not guilty.

dictment, or yet if it be not proved by two witnesses of credit:

And though it be so proved, yet if the overt acts of that sort of treason be not proved by two credible witnesses against you, observe it is not enough to convict you by the law.

And observe, that an evidence of conspiracy to levy war and some acts done in order to levying of war, yet no proofe of levying of war, being made against you be not turned upon you, as an evidence of any open act of your conspiracy to destroy the king, which ought not to be so turned upon you.

Againe watch that acts of misdemeanor be not objected to you as an evidence of treason.

Consider the evidence against you relating to what you sayd or writt, whether any thing that will be proved that you say'd or writt do in itselfe amount to any treason lay'd in the indictment.

And upon what statute it will be so construed to be treason, whether upon the stat. of Ed. 3d or K. Ch. 2d; if upon the last, observe it be proved there was a prosecution upon it within six moneths after such speaking or writing, and an indictment within three months after such prosecution, otherwise you are not guilty of treason within that statute.

And observe, that speaking and writing which are made treason by that statute are not to be drawen into an evidence of treason within the statute of Ed. 3d.

Because that statute doeth circumscribe treason to what is declared treason and expressly set downe in that statute, and doeth enact that nothing shall be construed or declared treason in any Court but in parliament but what is declared and expressed in that statute.

In the evidence against you for your writing, Take care that all that was writt by you upon that subject be produced, and that it be not given in evidence against you by pieces which must [or much] invert your sense, and consider the proofe or evidence of the time of such writing if within the time limited for prosecution, and indictment in the statute of the king.

Otherwise it may be no evidence against you.

When the witnesses are examined and all the king's evidence is read and heard against you,

Then you are to make your defence.

In your defence,

You may observe, if there be any improbabilyties in the evidence against you,

And if there be any contradictions.

And how it varyes from the charge against you in the indictment.

When you have made your observations to weaken the evidence,

You may make observacions upon the witnesses against you, opening what you have to say against them, and to make their testimony as incredible as may be.

Then you are to shew how the indictment is in itselfe made up of several sorts of treasons.

And those treasons not proved by such overt acts as the law requires,

And shew wherein.

Nor by two witnesses to every act.

That no act, at least make some instances of acts of treason charged in the indictment which are not proved, and that if all the evidence against you were true, you ought to be found not guilty as to some of the facts lay'd in the indictment.

Then answer the particular facts layd in the indictment of which some sort of evidence is offered against you.

Shew how imperfect that proofe is.

For your writing objected to you,

Shew how it ought not to bear the construction they would give it.

The writing read against you is but part of a great deal which cannot be understood without perusing the whole.

Shew the designe of that writing.

And that it ought not to be wrested to their purpose.

You know the designe and purpose of it.

Then call your witnesses to justify what you have sayd.

Call your witnesses to discredit the witnesses against you.

When you have all your witnesses examined, then observe to the Court and jury the weakness of the king's evidence against you.

And the strength of your own evidence.

Then the king's counsell will reply and conclude to the Court and jury against you.

Take care they do not misrepeat or mistake the evidence against you.

Then the Court will sum up the evidence against you; observe you have the evidence delivered by the Court without mistake.

Itt is not the alledging of a fact in an indictment to be committed or done *proditorii* makes treason in the judgment of law, unles the fact as alledged in the indictment be in itselfe treason.

Itt [qu. If it] is declared by the court and king's counsell that the treason of which

Cl. of Cr. Culprit, How wilt thou be tried?

Sidney. By God and my country.

Cl. of Cr. God send thee a good deliverance.

L. C. J. If you be not guilty, I pray God you may escape.

Att. Gen. My lord, will you please to appoint a day for his trial that he may take notice of it now?

L. C. J. What time would you have?

Att. Gen. A week's time, do you think that will be enough?

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the prisoner is indicted is treason upon the statute of 25 Ed. 3, and that upon the first branch of that statute.

Then if the treason as alledged in the indictment be not such a treason and be not sufficiently alledged with a sufficient overt act in the indictment particularly set forth as that branch of the statute requires.

Itt may be insisted upon by the authority of Pyne's case Trinity 4. Car. 1. Cro. 1. rep. f. 125 and many cases therein mentioned.

And upon lord Coke's opinion, 2* Inst. high treason fo. 14, and Hale's Pleas of the Crown, pag. 13.

That there's not a sufficient overt act of such treason within the first branch of the statute of 25 Ed. 3. particularly set forth and expressed in this indictment.

The writing therein mentioned may be offered to be no such overt act.

Itt sounding rather more like an hereticall opinion or a mistaken opinion of monarchiall government and not applicable by the parts of it expressed in the indictment either to the government or monarchy of England directly, and if it should be applyed to the monarchy or government of England it ought not upon this indictment, as the words are layd in the indictment, to be applyed to the person of the present king.

The words themselves do not so apply themselves, and to make treason they are not to be drawn to any such application especially in an indictment though [qu. they] ought to be direct and positive in themselves and not to be made so by argument or construction,

And the substance of the words seems to tend to no more than to place the parliament to some purposes above the prerogative of the king, of which the king himself is one of the three states, and without whom there can be no parliament or act of parliament by the law, and itt is no more, it may be then to say that the king having his lords and commons joined to him in parliament may do more than the king can do without them, or that the king in this conjunction may controul much of his own prerogative without them.

And perhaps for ought appears in the indictment this may be applyed and was applyed by the writing to the late king or some other king and not to his present majesty.

The case of the duke of Somerset in the reversall of his attainder for error of this nature in the indictment may be in some sort applyed to this indictment upon the incerteynty and insufficiency of the overt fact alledged in this indictment.

Itt may be also insisted upon

That this indictment doeth confound severall branches of the treasons enacted by the statute 25 Ed. 3, by turning evidences of levying war to acts of compassing the destruction of the king, which ought not to be by the meaning of the statute and opinion of lord Coke and other authorityes as conceived.

By this way of indictments upon the statute of 25 Ed. 3, judges may be let in to make constructions of treasons in cases which are left to the parliament only by that statute.

The stat. 2 H. 5. doeth require that all jurors upon triall of the death of a man have 40*s.* freehold estate.

I do not finde in any statute or law booke that at com'on law jurors upon the triall of the death of a man might serve who had no freehold.

Upon consideracion of Fortescue cap. 25, and of my lord Coke's opinion in his first Institute f. 272, and of the statute of 2 Hen. 5, and of the stat. of 1 and 2 Mar. which reduces trialls in treason to the com'on law, and of the stat. 35 Hen. 8, which directs the tryall of foreigne treasons, &c. and the statutes of 1 Ed. 6, and 5 Ed. 6, for two witnesses in treason.

Itt is very probable that at com'on law some freehold was requisite to constitute a juror in all these cases though not to the value of 40*s.* yearly, yet to some value and that want of freehold was a challenge at the common law.

Stat. 2 Hen. 5, requires 40*s.* freehold for a juror to trye a plea personal where the debt or damages amount to 40 markes, but doeth not make any provision where the debt and damages do not amount to 40 marks, yet says Fortescue cap. 25. in that case the jurors must have some competent freehold though not to the value of 40*s.* yearly, this seemes to be lord Coke's opinion, 1 Inst. fo. 272.

If att the common law freehold was not requisite in such jurors but that this is made requisite by the stat. 2 Hen 5.

Itt is very worthy of great consideracion if the stat. 1 and 2 Mar. which reduces the tryall of treason to the com'on law doeth abrogate this quality in jurors required by the stat. of 2 Hen. 5.

For the stat. of 1 and 2 Mar. doeth not touch the tryall of foreigne treasons enacted by 35 Hen. 8, but the same continue still by the stat. 35 H. 8, and are not reduced to the tryalls of such treasons by the com'on law as appears by Storye's case in Dyer.

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* This should rather be 3 Inst.

Sidney. No, pray, my lord, give me a fortnight's time.—*Att. Gen.* I won't oppose it.

Sidney. In the next place I desire a copy of the indictment.

L. C. J. We can't grant it by law.

Sidney. I desire you would please to give me counsel.

L. C. J. We can't do it; if you assign us any particular point of law, if the court think it such a point as may be worth the debating,

Neither doeth the stat. 1 and 2 Mar. abrogate the statutes of 2 and 5 Ed. 6, which requires two witnesses in cases of treason.

All which by a large construction might have been given this statute.

That the indictment doeth conteyn several treasons in their nature distinct, and of severall kindes and species, which ought not to be charged in one indictment.

Pray counsell may be admitted to argue this matter, before you be compelled to plead to the indictment, for after not guilty pleaded no advantage can be had of this matter.

If the court over rule you in this, and require you to plead to the indictment, then plead severall not guiltys, to the severall treasons charged in the indictment. If the court will not allow you to plead such severall pleas, pray counsell may be heard, for you to argue this matter.

If you are over ruled in this, and be required to plead not guilty, to the whole indictment.

After you have pleaded not guilty.

Desire of the court, and of the king's counsell, if they intend to proceed against you for treason, upon the statute of Ed. 3, or upon the statute of the 13th of king Charles the Second, or upon both.

If they proceed upon the statute of king Charles the Second, insist upon it, that the prosecution for the offence charged in the indictment, was not within six months next, after the offence committed, and indictment within three months after such prosecution, which is required by that statute.

If they proceed upon the statute of Ed. the 3d.

Desire the court and king's counsell, will please to declare upon which of the treasons declared in that statute, they intend to proceed against you.

If for treason in conspiring the death of the king.

Or for treason, in levying of war.

And desire the evidence may be applied, to the particular treason they intend to insist upon.

If they declare they will proceed upon treason, for conspiring the death of the king.

Observe upon the evidence, if there be any positive proofe against you, of any conspiracy to kill or destroy the king, and if this be proved by two witnesses.

And if there be any overt or open act, proved against you for this purpose.

Insist upon it that it is necessary, by the statute of Ed. 3, that all this be proved in this manner by 2 witnesses, otherwise you ought not to be convicted of treason by law.

And if a plaine overt or open act for this purpose be not proved against you, but it may be some evidence conducing to prove or perswade the jury, that you are guilty of an overt act for that purpose will be offered, insist upon it that there ought to be exprest proofe of an overt or open act committed by you, for this purpose and that evidence, argument or presumption of such overt act, will not satisfye the statute of Edward.

And if the court doe not allow this, pray counsell may be admitted to argue that matter for you.

And particularly if the evidence given against you, be sufficient proofe of the treason charged in the indictment against you, and such proofe of an overt act, as the statute of Edw. the 3d. requires.

You must be watchfull that in the evidence against you, that the evidence for levying of war, be not turned upon you as proofe of an overt act of your conspiracy to kill or destroy the king, and by that meanes turn that which will not be a sufficient act of levying war, to be an overt act of your conspiracy to kill the king, and by that construction draw upon you a constructive treason by argument and inference, which is not declared by the statute of Ed. 3, and by that statute ought not to be declared by any court in Westminster-hall, or any court of Oyer and Terminer, or goall delivery, or any other court but in parliament.

By such constructive treasons, the law of Edw. the 3d, may be eluded and avoided, which setts the bounds of treason and declares that nothing shall be declared treason, but what is declared by that statute in any court whatever but in parliament, if judges may be admitted to lett in treasons by construction upon that statute, it will become of little or no avail to the subject.

Pray counsell may be admitted to argue this matter for you, no age hath admitted such constructive treasons upon that statute, and ought not to be attempted or practiced in this age.

If treason for levying of war be insisted upon against you, observe themne the proofe of levying of war by you, which is necessary in that case.

And this must not be supplyed by evidence, argument or construction.

Pray counsell to argue this also as the fact upon the tryall happens.

And make the like observations and defence upon this charge, and evidence for levying of war as in the other charge, for conspiring the death of the king.

Pyne's Case, Cro. 1. 4 Car. 1, 117.*

He is no more fitt to be king than Hickwright, as unwise a king as ever was,

* See vol. 3, p. 359, of this Collection.

you shall have counsel: but if you ask for counsel for no other reason than because you ask it, we must not grant it. The court is bound to see that nothing be done against you, but what is according to the rules of law. I would be very loth to draw the guilt of any man's blood upon me.

Sidney. Has not every body counsel?

L. C. J. No.

Sidney I have several points of law.

L. C. J. Tell us them.

Sidney. My lord, will you oblige me that am an ignorant man, and confess myself so, upon hearing my indictment for things I know not of a long time, presently to raise a point of law?

L. C. J. It is not we oblige you, Mr. Sidney, it is the law obliges you. We are the ministers of the law, it is the law says we are not to allow you counsel without making your objections, that the court may understand whether it be fit: It is the law says we may not allow you a copy of the indictment. Therefore do not go away and say that we as men sitting here impose upon you, we sit here only to administer the justice of the nation.

Just. *Withins.* Sir, you will have a fortnight's time to consider of objections in law.

L. C. J. If you will have it read, you shall. Those things that you may have by law, God forbid but you should have the benefit of them.

Sidney. I desire, my lord, to hear it read again.

Att. Gen. Would you have it read in Latin?

Sidney. Yes, if you please, I do understand a little Latin.

Then the Indictment was read in Latin.*

Sidney. What is that statute?

L. C. J. When you come to your trial, Mr. Attorney will tell you what statute he goes upon. And he may give in evidence any act of parliament that comprehends treason.

Sidney. Methinks he should say what statute he goes upon.

Just. *Withins.* Sir, would you have a new indictment for you?

L. C. J. He must take notice of his trial this day fortnight. Lieutenant of the Tower, you may take the prisoner back again.

Then the lieutenant of the Tower took away his prisoner.

On the 21st of November, Algernon Sidney, esq. was brought to the bar of the court of King's-bench by Habeas Corpus, and proclamation for information being made, he desired pen, ink and paper, which were granted him. And he also desired, that two persons, viz. Mr. Wynn and Mr. Gibbs, might write for him, which was also allowed by the court.

Col. *Sidney.* My lord, when I was last here before your lordship, I did desire a copy of my indictment, and I thought the law did allow it me. But being in an hurry, carried first to a tavern, then led through soldiers, and surprised absolutely, I could not give that reason why I thought the law allowed me a copy. My lord, I was denied a copy, and thereby I was deprived of the benefit of a special plea I designed to have put in. This would have been a great help to your lordship, and to me; the denial of which hath been a great prejudice. Now, my lord, that which I thought was law then, I think I can give a better testimony that it is so now upon the statute of 46 Edw. 3, wherein it is expressed, that 'tout parties et tout gents,' that is, all people shall have a copy of every record; and it enumerates several matters, as well that against the king as other people.

and so governed as never a king was, etc.

Adjudged by all the judges in town.

Though the words were as wicked as might be, yet were not treason.

Unless by some particular statute, no words will be treason, for there's no treason, at this day but by the statute 25 Ed. 3.

And the indictment must be framed, upon one of the points in that statute.

The words are but evidence to discover the corrupt heart of the speaker, but of themselves are not treason, to charge the king with a personal vice, no treason.

Peacham's case * indicted for a sermon never printed nor preached, and found in his study, found guilty but not executed, and many judges of opinion it was not treason.

Stat. 13 Car. 2, enacts

The compassing the death or destruction of the king or to levy war, and expressing of it by writing, preaching, or otherwise speaking, made treason during the king's life.

Which shews it was not so before.

Relating to stat. 13 Ch.

Inst. 2† f. 14, compassing to levy no war, [the *no* seems inserted by mistake] no overt act of conspiring to kill the king.

Throgmorton's case ‡ in Hollinshed.

Hale's opinion.

Strafford's act of parliament.

The several acts of parliament made int. 25 Ed. 3, and prim. Ed. 6, 12.

The stat. of 1 Ed. 6, 12, reduces all treason, and all § of treason to the stat. of 25 Ed. 3.

As to the doctrines of constructive treasons. See this Collection, *passim*, and particularly the arguments of Mr. Erskine, in the cases of lord George Gordon, A. D. 1780, and of Hardy, A. D. 1794.

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* See vol. 2, p. 869, vol. 3, p. 368, of this Collection.

† This should rather be 3.

‡ See vol. 1, p. 869, of this Collection.

§ Here a word appears to be illegible.

* See Vane's Case, vol. 6, pp. 132, 143, 169, of this Collection.

This is a general law still in force: My lord Strafford had a copy, and my lord Stafford, and the lords in the Tower had copies of their indictments. And, under favour, I think it was never more necessary than to me, there never having been, perhaps, a charge so long and so confused. Now, my lord, I have a copy transcribed of this statute. [Shewing a paper.]

L. C. J. (Sir George Jefferies.) We remember the law very well. Mr. Sidney did move for a copy of the indictment, and the court denied him then, and so shall now. And yet all this while we shall deny you nothing that is law. You shall have the right that becomes a subject in your condition. And we must tell you, that notwithstanding all that case we ought not to have given you so much favour (perhaps in strictness) as we did. And because you did particularly take notice of the case of sir Henry Vane last time, I will shew you the court did indulge more to you than was done to that person. In sir Henry Vane's case, by the opinion of all the judges, it was declared, That no copy ought to be given, neither of the whole, nor any part of the indictment, except they shew matter of law. But your council, since you went away, moved for the copy of the indictment; and to satisfy them, I directed the case that you took notice of to be read in the court: And I thought they had been sufficiently satisfied. You had the indictment read to you in Latin, which was denied in the case of sir Henry Vane. And there is a later case, known to most persons here. By the opinion of all the judges of England, a copy of the indictment was denied to my lord Russell. Therefore arraign him upon the indictment; we must not spend our time in discourses to captivate the people.

Sidney. Is not this a good law, my lord? [Holding out the paper.]

L. C. J. You have the rule of the court.

Just. *Withins.* Any thing the law will allow you, you shall have; but I am sure if you did advise with your counsel, they must tell you the same thing.

So the clerk of the crown called the jury, and after several challenges, the names of the jury were as follow:

John Amger, Richard White, William Linn, Lawrence Wood, Adam Andrews, Emery Arguise, Josias Clerke, George Glisby, Nicholas Baxter, William Reeves, William Grove, and John Burt.

L. C. J. Look you, gentlemen of the jury, there are some gentlemen at the bar, as we are informed are apt to whisper to the jury; it is no part of their duty; nay, it is against their duty. And therefore, gentlemen, if you hear any of them by you that offer to whisper, or make comments in this cause, as you are upon your oaths, and I doubt not but will do your duty between the king and the prisoner; so I expect if you hear the counsel say any thing you will inform the court. Let us have no remarks, but a fair trial in God's name.

Cl. of Cr. You that are sworn, look upon the prisoner, and hearken to his cause. He stands indicted by the name of Algernon Sidney, of, &c. (as in the indictment) your charge is to inquire, &c.

Then Proclamation for Evidence was made.

Mr. *Dolben.* May it please your lordship, and you gentlemen that are sworn, This is an indictment of high-treason preferred against Algernon Sidney, the prisoner at the bar. The indictment sets forth, That he, as a false traitor against our most illustrious prince, Charles the Second, his natural lord, not having the fear of God in his heart, &c. on the 30th of June in the 35th year of the king, and divers other days and times, as well before as after, in the parish of St. Giles in the Fields, in the county of Middlesex, traitorously, with divers traitors unknown, did conspire the death of the king, and to levy war within the kingdom. And, to complete these traitorous purposes, did then and there maliciously, advisedly and traitorously, send one Aaron Smith into Scotland, to excite some ill-disposed persons of that kingdom to come into this, and to consult with the said Algernon Sidney, and other traitors, of and upon assistance from the kingdom of Scotland to carry on those designs. And the indictment sets forth further, that to persuade the people of England it was lawful to raise rebellion, the said Algernon Sidney did cause to be written a false seditious libel, in which are contained these English words, 'The power originally in the people of England is delegated unto the parliament. The king is subject to the law of God, as he is a man to the people that makes him a king. In as much as he is a king, the law sets a measure unto that subjection, &c.' (as in the indictment.) This is laid to be against the duty of his allegiance, against the peace of the king, his crown and dignity, and against the form of the statute in that case made and provided. If we prove him guilty, we doubt not but you will find it.

Attorney General. (Sir Robert Sawyer.) My lord, and you gentlemen of the jury, the prisoner at the bar stands indicted of the highest crimes, the conspiring the death of the king, and the overthrow of the English monarchy. Gentlemen, we shall use this method in our evidence. We shall shew by many witnesses, that there was a design of raising and making a rebellion within this kingdom. For, gentlemen, you must take notice, and I think there is no Englishman but does believe, that for several years last past a design was laid, and for that purpose several secret insinuations were made use of, and public libels spread abroad to persuade the people, that the king was introducing arbitrary power, that he subverted all their rights, liberties, properties, and whatever was dear to them. They endeavoured to make the world believe the king was a papist. And when, gentlemen, by such stratagems they had worked upon many incautelous persons, when they thought they had gotten a

sufficient party, then there was a design of an open rising, (for they thought all things were ripened) and that was to be in several parts of the kingdom. Some persons, to effect this design, were for a present assassination of the king. Others would do it in a more fair and gentle way. They thought it below persons of that great quality as the prisoner is, and therefore were for doing it by open force.

When we have given that general evidence, we shall then come to shew you what share and part the prisoner had in this design. For certainly he was looked upon as a very eminent person, whose education abroad, and former practices at home had rendered him fit for to advise and proceed in such affairs. We shall prove when these matters were ripe, this gentleman was of the council of state, of the six that were to manage this matter of the rising We shall shew the several consultations they held: one at Mr. Hambden's house, another at the house of my lord Russell. There we shall acquaint you what debates they had; for they acted like very subtile men; and there they debated, whether the rising should be first in the country or city, or both together. They came to a resolution it should be in both places at once. Then, when they had asserted that point, they come to consider the time of rising; and upon that they thought fit to call in aid of Scotland first; and that was this gentleman's particular province. For he, being a man of great secrecy, was to send an emissary into that kingdom, and invite some persons over to treat with them about it. We shall prove that an emissary was sent, and this gentleman gave him a considerable sum to bear his charges. We shall prove that several Scotch gentlemen, in pursuance of this resolve, came here to treat with this great council of state, about this affair: and shall make it appear to you, that as soon as ever the least discovery of this plot was, these persons concealed themselves and withdrew, as the rest of the plotters that have fled from justice.

Gentlemen, this was not enough for this gentleman to consult on these several passages, but to demonstrate to the world, that his head and heart was entire in this service, and that he might carry it on the more effectually, he was at this very time, when this emissary was gone into Scotland, preparing a most seditious and traiterous libel; we instance in some particular words of it; but we shall shew you, that the whole design of this treatise is to persuade the people of England, that it is lawful, nay, that they have a right to set aside their prince in case it appear to them, that he hath broken the trust laid upon him by the people. Gentlemen, he does use in that treatise several arguments drawn from the most rebellious times that ever were in England, from the late rebellion (I must needs use that word, notwithstanding the act of oblivion, when a gentleman shall now attempt to do those things for which he was pardoned then) and from other kingdoms, where rebellion hath been prosperous against princes. Then he falls to reasoning, and uses great reason in the case, that all the power of the prince is originally in the people, and applies that discourse, that the power of the king was derived from the people upon trust, and they had already declared the king had invaded their rights, and therefore he comes to argue, they might assume that original power they had conferred. And he tells the king, that is no hard condition; if he thinks it so, he should lay down his crown, if not, he threatens the condition would be exacted or otherwise should be revenged by those he had betrayed: and who but this gentleman and his confederates, that thought himself not only able to govern this nation, but many monarchies, should call him to account for it? For he lays down this principle that though all the people do rise against their prince, it is no rebellion. The whole book is an argument for the people to rise in arms and vindicate their wrongs. He lays it down, That the king has no authority to dissolve the parliament; but it is apparent the king hath dissolved many; therefore he hath broken his trust, and invaded our rights. And at last concludes with that passage laid in the indictment, 'We may therefore shake off our yoke; for it is not a yoke we submitted to, but a yoke by tyranny (that must be the meaning of it) they have imposed on us.'

Gentlemen, if we prove all these matters to you, I doubt not you will do right to the king and kingdom, and shew your abhorrence of those republican principles: which, if put in practice will not only destroy the king, but the best monarchy in the world.

Solicitor General (Mr. Finch.) Pray call Mr. West, [Who appeared.]

Sidney. I pray one word, my lord, before Mr. West be sworn: I have heard, my lord, Mr. West hath confessed many treasons, I desire to know whether he is pardoned or no?

L. C. J. I don't know that.

Sidney. My lord, how can he be a witness then?

L. C. J. Swear him: for I know no legal objection against him. He was a good witness in my lord Russell's trial.*

Sidney. My lord, if another did not except against him, it is nothing to me.

Mr. *North* † Pray give an account to the

* See p. 613, of this volume.

† After a pretty full account (into which are interwoven many animadversions of this trial, Ralph notices, that "Mr. North, who had his share in the job, has left a posthumous defence of it." The following is the passage (Examen, 406) to which he alludes:

"The next trial he graces with his comment is that of Mr. Sidney, of whose treason I shall give an account. This person's case, of all those that suffered for this conspiracy, was most pretended to have been hard, and the law to have been strained against him. Therefore it is but just to the times to shew the little cause there was for it; and this I shall do, as in other

court of what you know of a general insurrection intended in England.

Sidney. What he knows concerning me.

L. C. J. We will take care of that, that no evidence be given but what ought to be.

Sidney. Is it ordinary that he should say any thing, unless it be to me and my indictment?

L. C. J. Mr. Sidney, you remember in all the trials about the late popish plot, how there was first a general account given of the plot

concerns of this history, by following the author's steps; for he is now a picquere", relates nothing but by way of cavil. At first he was not pleased with the witnesses, and now he falls foul upon the proceedings; and, as to this, says not one word which is not a libel and false; as first, That Mr. Sidney was not taken up directly for a plotter, but for a republican and a fanatic. I must here note that the fallacy, which runs through this whole libel upon the subject of Sidney's case, is this. Mr. Sidney was a declared commonwealth's man, and it is to be supposed that, whatever aim others had, his engagement was upon the commonwealth scheme.

"Now the author would drop the treason and substitute his commonwealth principles, as the only quarrel the court had to him; as if a commonwealth's man could not be a traitor. This will appear more fully in the sequel; but, in the mean time, the meridian instructor himself could not have inspired a sentence more false than that above is. For he was taken up directly for a plotter and for nothing else; as both the warrant for his commitment and the indictment against him (of which afterwards) will shew. There was an express proof of a treasonable fact, and desperate one too, by one witness; and that, after the precedents in Oates's plot, was sufficient to take up and commit for high treason. But the ignorance here is as gross as the falsity; for a man cannot be taken up and committed for high treason without an oath of the treason in overt fact especially expressed in the warrant.

"The libel is very concise, in so few words to comprise so much falsity and nonsense: but what follows may be excused of the latter, having a full complement of the other. For it is no less false, than scandalously and impudently affirmed, that he was observed to say little in his defence, as knowing whatever he would say would signify nothing with that judicature who, he thought, had prejudged him. To this first, what is pretended to be observed of his saying little, is a brazen untruth; for he said a great deal, and made an elaborate and strenuous defence; and being well able, he sustained it with all the advantage this cause would bear. Then as for that serpentine insinuation —— "as knowing," and then —— "who he thought," one would imagine the author libelled by the advice of counsel, using a language that shuffles, but affirms nothing disprovable: as if he were consciously afraid to be indicted for a false libeller of the sovereign criminal court of justice. But really it is not so; he uses that dialect only in imitation of his authors and authorities that, being obnoxious, used to write so carefully; but he, finding himself safe, comes to the categoric very roundly, saying 'And so it was really and in effect,' viz. that all defence was vain, for the court had prejudged him. I have not met with any thing of the *genus scandalosum* so aggravable as this. But now, if he has found a good, sound, and convincing reason for all this, who will not clap him on the back? Well then, a reason we shall have with a 'For, as the learned sir John Hollis [Hawles] hath well remarked.' This reason is turned into an authority, a transcript out of the learned libel of Hollis, wrote with notorious malice to defame all the law proceedings of this time; in which he foully, evasively, and falsly traduceth this trial. All which the author making his own, lay ye there a reason; which may have some farther notice taken of it afterwards.

"But, in the mean time, I think it belongs to candour, where the appeal is to judgment, to make things as fairly understood as may be, and not to hang upon characters or censures only. And, in particular, this base dealing in the author makes it reasonable to give here Mr. Sidney's case truly stated; by which it may appear, that (according to common justice and the law) it could terminate in nothing less than an attainder of that mistaken gentleman; and thereby to vindicate the proceeding and sentence, which those men and the whole fanatic party, at the time and ever since, have been bold to traduce. And then I will shew the knavish sophistry of this Mr. Malice, as, from the genius of the person and sense of things, rather than similitude of sound, the wags used to style the aforesaid sir John Hollis." [It is not unlikely that North perverted the name of *Hawles* into *Hollis* for the sake of this wretched attempt at jocularity.]

"Mr. Sidney was indicted for conspiring and imagining the death of the king, which is the first article in the statute 25 Edw. 3. and, by construction of law thereupon, it is understood that, not only the life of the king but his liberty and power to exercise his government are equally under the guard of this article. So that if the evidence be of an intent to seize or imprison the king, or to master his forces that guard his person, though it appear not that the intention was directly to bring the king to death, yet it is high treason within that article. For it is found by experience that, in the case of kings, loss of life is the consequence of loss of liberty. And so the law stands declared in diverse instances, about the time of Oates' plot, pursuant to former resolutions; and the lord Russell's case was determined upon the same law. But, since this article charges the intent, which is the act of the mind, it is added that such intent is to be made appear by overt facts: which creates a distinction, upon the common notion of high treason, between facts, that

in Coleman's trial, and so in Plunket's, and others: I do not doubt but you remember. And sir William Jones, against whose judgment, I believe, you won't object, was attorney at that time.

Mr. *North.* Mr. West, What do you know of the general insurrection lately designed?

Mr. *West.* My lord. I have had the honour to know colonel Sidney several years; but I do not remember that I ever saw him from the

are the treason, and facts that are only the overt evidence of it; which latter may be in themselves innocent, but, as they declare a nocent intent, are vulgarly, but inadequately, called the treason. Then the same law hath provided that, for treason, there shall be two lawful accusers, that is witnesses; which, by judgment of law, goes to the treason in the indictment, viz. the 'intent, &c.' but not to every overt fact brought to evidence that intent: for if there be two overt facts, and each proved only by one witness, that is two lawful accusers of the treason charged. And so the law is left indubitably settled in such cases, whatever any libelling lawyer hath pretended, or shall pretend, to the contrary.

"In Mr. Sidney's case, the overt facts, charged, were first, the being of a council of six, that met for managing the insurrection, wherein was resolved to call in the Scots; and he particularly undertook that province, employed Aaron Smith, and paid his charges. This was proved positively by the lord Howard, who was one of the same council: And, I think, is somewhat more than being, as the author says, a common-wealth's man. But to this testimony express he hath now nothing to alledge but that the prisoner absolutely denied it. But even that is not true, though it is allowed a man, upon a trial, in defence of his life, to deny all. I cannot find one expression in the colonel's large defence, which amounts to a denial of his being of the council of six, or of his sending Aaron Smith, or of any thing my lord Howard said positively of him. And we may allow the author so much upon this gentleman's veracity, who was of a noble family, though gone of principles like the Greeks that made it an heroic action to kill kings (then called tyrants) that he would not vent a direct lye in the face of the court, unless his pleading *non cul'* be accounted so; as when a man, for delay, pleads *non est factum* to a bond, he may be said to deny his hand and seal, who would not do it upon the question in the face of the court. I say, allowing the author even so much, yet he is a falsary in saying Mr. Sidney denied what he did not deny; but he argued indeed very acutely against the credit of my lord Howard's testimony, upon topics of improbability, and disparagement of him. See here now an author that will affirm at a venture, to serve a false turn, what the prisoner would not do to save his life; and if he had done so, as to the author's force of argument, it had been nothing to the purpose, because a prisoner's denial is no testimony for him.

"But Hollis harps also, as the author cites him, upon the weakness of the lord Howard's testimony; saying 'my lord Howard was 'rhetorical, even to pedantry, upon the matter, 'according to his vain custom.' Ergo what he swore was not true. We shall see how they daub on their colours anon. In the mean time we proceed to the second overt fact, charged in this indictment; and that was a book which he had, some time before, wrote, upon the subject of a commonwealth, against monarchy: In which he set up principles and positions directly inconsistent with the English government, as are specified in the indictment. It appeared in the evidence that, at the very time when he was taken, and his papers seized, the book was brought forth and lay upon his desk with corrections evident upon it; and in that posture it was found at the discovery of the Rye Conspiracy, intended, as was understood, to be then published; the whole drift of it being to shew it was lawful, commendable and necessary to do what he was about, that is to take up arms against the king, and to depose him. This being joined with the other circumstances in the case, and upon a full proof by diverse witnesses, and comparison of hand writing that the book was wrote and corrected with his own hand; the court took the book as another overt act of the treason within the indictment. It is to be remembered, that it imported not whether the book itself was treason; for an innocent fact, as whetting a knife, or the like, joined with circumstances that construe it done with an intent to compass the king's death, is an overt act. Nor is it material whether the book alone, without the express treason proved had made good the indictment, or not; for here they were both together. The prisoner never denied the book, but put it off, saying, 'he was 'not to answer for any thing there.' And although all this is in print, the author has the front to say, 'it was never proved to be so much 'as his hand.' What will not he say that says that? I may justly say there was not only the common proof of the opinion of witnesses, but writings produced and sworn to be his hand, as bills, and letters, and compared in court? but the prisoner made a considerable defence against that sort of evidence. And I remember well one Mr. Goodwin Wharton stood up and said 'give me any writing, and I will in a quarter 'of an hour bring another so like, as the writer 'shall not distinguish them;' or to that effect: and one of the judges said, 'Sir, You might 'have spent your time better.' If Oates had brought such a proof to any of his commissions, &c. I should have been a convert to his plot.

"But now, to take up again with the knight Hollis, who hath stung this proceeding as deep as his quill would enter, and we must necessarily have to do with him, because the author has so taken him into his twist, that we cannot baulk him; he states the two articles against

time I came acquainted with any part of the conspiracy, till the discovery that was at the council.

Mr. *North*. Pray give an account of what you know of the plot in general.

West. My lord, in October last, captain Walcot came to me, and told me that my lord Shaftesbury had designed an insurrection in November; I used some arguments to dissuade him from it. But a little afterwards he came and told me, the thing was wholly disappointed, and then it went off, and my lord Shaftesbury went for Holland. Colonel Rumsey afterwards, about Christmas, said there were some lords, and gentlemen intended to make an insurrection; the persons were the duke of Monmouth, my lord of Essex, my lord Howard, my lord Russell, the prisoner at the bar, and Mr. Hampden, jun. After some time he told me they had altered their measures, and were resolved not to venture upon an insurrection in England, 'till they had a concurrency in Scotland. Afterwards I was not privy to any thing else, but what I had the report of from Mr. Nelthrop and Mr. Ferguson. Mr. Nelthrop told me the prisoner had said——

Sidney. My lord, I am very unwilling to interrupt the gentleman—

L. C. J. You must not interrupt the witness. Go on, Sir.

West. Mr. Nelthrop told me, the prisoner at the bar had sent Aaron Smith into Scotland, and given him a sum of money to bear his charges, and sent letters to some Scotch gentlemen to invite them to town. The letter bore a cant of settling some business in Carolina; but the business was coming up about the insurrection. After this Mr. Smith returned, and some Scotch gentlemen with him; and soon after Mr. Ferguson gave an account of that affair, and said, the Scotch proposed, if they might have thirty thousand pounds in ready money, they would undertake to make an insurrection in Scotland, without the concurrence

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Mr. Sidney, first, the sending into Scotland; secondly, the treasonable book, which, by the way, is not expressed as an honest lawyer should; for the article, of crime, was but one, that is 'compassing the death of the king.' Those two were not the treason, but the overt facts, which need not be criminal in themselves as I noted before: but all these harpers strike upon that string; a fallacy so gross that a lawyer should be ashamed of it. But he says, 'He (Mr. Sidney) was talked to death under 'the notion of a commonwealth's-man, and 'found guilty by a jury who were not much 'more proper judges than they would have 'been if what he had wrote, had been done by 'him in Syriac or Arabic.' Is this ingenuous? Was the question upon the merits of the book, whether the cause of republic was made good against monarchy or not? As if, by the cogency of that book the treason was to stand or fall. It is foolish to say the jury were not judges of the controversy, which was in no sort the question. But yet as well the jury, as all the audience, that owned English for their mother tongue, could understand, out of the indictment when it was read, the incentive passages, to stir up rebellion, taken out of it; enough to shew what he intended by the whole connected with the Scotch negotiation. But here the author chimes in and says, 'it was but an essay upon 'government, with a bias towards a common-'wealth.' The passages, I mentioned, shew the bias was so strong, as monarchy was to fall by the means. But it is a jest, that now, since the revolution, the book, as the author hath it, is found very innocent, because it is printed, and nobody questioned for it. Do not we know that the profit of the copy, in such hands as had favour, would get the better of any offence which the government (then secure from sedition, or any popular pretensions) could take at the principles held forth in it? But it being for friends, say they, let them make their best of it. But there has been times when the principles, held forth in this book, would have been taken notice of by the government. The scope of it being to shew that the people, at their mere pleasure, may appoint who shall head the rabble, call parliaments, and depose the king (or any government, for the argument goes to all alike) if he be not a good servant; and the like too tedious to particularise. This is what our famous historian makes to be only a little warping towards a commonwealth, for which his wise lawyer says, with parallel honesty, 'that he was talked to death.'

"But lest I may seem as much to warp on the other side, by asserting a matter of constructive law upon no other authority than that of the courts, whose justice is here made the question; I think, in farther vindication of that justice, it is fit to produce some determination of law, as may be more authentic and clear of these factious pretences, to shew that a man's hand-writing, or any writings, as they may be found and circumstantiated, may be construed an overt fact of treason. And (to make sure) the citation shall be of a case that happened since the revolution; and I am not certain, but think this same lawyer Hollis was on the side of the prosecution to urge the matter against the prisoner: and it is the case of Mr. John Ashton. He was taken with the lord Preston, as going over to France in time of war; and, upon search, a pacquet of papers was found in his bosom sealed up. And, in that packet, were found divers treasonable papers, some of the lord Preston's hand, and some of other hands. But, as to Ashton himself, there was no pretence, much less proof, that any of them were wrote by him; nor could it be made appear that he knew the contents of any of them. And yet this packet, so found, was construed an overt act of high treason, because of the suspicious circumstances under which it was found; and Ashton was attaint and suffered thereupon. There is a case now, which being in print, the author may carry to his lawyer Hollis, and take his opinion upon it."

of England. He said this proposal was agreed to, and money would be soon ready; and he said that Sheppard would return the money. That the arms were ready bought, and my lord of Argyle would go into Scotland and head the Scots. He told me when things were thus settled, some difference arose about raising the money; and at last he told me, my lord Grey did offer to raise ten thousand pounds out of his own estate, if the rest would pay their proportion. Then the Scots came down to less, but that would not be complied with. The places for the rising were Bristol, Taunton, York, Chester, Exeter, London. That there had been some debates, whether they should begin at London or the other places, and at last it was resolved they should begin at London with the rest of the places.—My lord, this was the account I had of the matter in general of Mr. Ferguson; but he said they were disappointed. Afterwards he told me the prisoner at the bar, and major Wildman, were very instrumental in working of it off, because they could not agree upon the declaration to be made upon the insurrection. The English were for a commonwealth: but the Scotch gentlemen answered fairly, it might come to it in time, but the noblemen there would not agree to it at present. As to the prisoner in particular, I know nothing, and did never speak with him 'till since the discovery.

Att. Gen. Colonel Rumsey. [Sworn.]

Mr. *North.* Pray, Sir, will you give the court an account of what you know of any insurrection intended, and how they designed to carry it on?

Col. *Rumsey.* My lord, the latter end of October, or the beginning of November, I was desired by my lord Shaftesbury to go to Mr. Sheppard's to know of the gentlemen that were met there, what was done about the rising intended at Taunton; and I had their answer, that Mr. Trenchard had failed them, and that it must cease for that time. That was all at that time.

Sol. Gen. What else do you know of any insurrection afterwards?

Rumsey. After that we had several meetings at Mr. West's chamber, where we had divided the city into twenty parts, and seven parts Mr. Goodenough had brought an account of; the other thirteen he said nothing of; for he had not spoke with those that were to tell him how many men they would afford. There was there captain Walcot, Mr. West, the two Goodenoughs, Mr. Borne, Mr. Wade and myself.

L. C. J. What was the result of those debates?

Rumsey. To see what number of men they could produce in the city for the insurrection.

L. C. J. Was there a rising designed?

Rumsey. Yes

L. C. J. And did these people meet?

Rumsey. There was no time set.

Sol. Gen. When was the meeting?

Rumsey. There were several meetings in March, and April, and May.

Sol. Gen. After the meeting at Sheppard's?

Rumsey. Yes, a great while. It ceased, I think, six weeks or three months.

L. C. J. Who did you meet with at Mr. Sheppard's?

Rumsey. There was the duke of Monmouth, my lord Grey, my lord Russell, sir Thomas Armstrong, Mr. Ferguson, and Mr. Sheppard.

Sol. Gen. Who did you expect should head this army?

Rumsey. That was never said any thing of.

Att. Gen. Who were to manage the rising?

Rumsey. We that met there.

Att. Gen. Had you no expectation of great men?

Rumsey. Mr. West told me, and Mr. Goodenough, that there was a council, which were the duke of Monmouth, my lord Essex, my lord Howard, colonel Sidney, Mr. Hampden, and my lord Russell, there were six.

L. C. J. What did he tell you of them six?

Rumsey. He told me they were managing a business with Scotland.

L. C. J. A business, pray speak plain, tell all you know.

Rumsey. For the insurrection.

L. C. J. Say so then, we know nothing of the business you were about.

Rumsey. My lord, Mr. West had that discourse with my lord Howard I never had; he is more fit to speak to that than me.

L. C. J. Speak your own knowledge and no more.

Mr *Jones.* After the death of my lord Shaftesbury who were the managers, and were to carry it on?

Rumsey. I told you, Mr. West and Mr. Goodenough did tell me the duke of Monmouth, my lord Essex——

Att. Gen. He told you so before. Do you know there was an insurrection then intended?

Rumsey. Yes, because we met towards the management of it; the company that met at Mr. West's chamber, and other places.

Att. Gen. What discourse had you with Mr. Ferguson about it?

Rumsey. Not about those gentlemen.

Mr. *North.* The next thing we shall shew, shall be that the Scotchmen came to town.

Sidney. My lord, I must ever put you in mind, whether it be ordinary to examine men upon indictments of treason concerning me that I never saw, nor heard of in my life.

L. C. J. I tell you, all this evidence does not affect you, and I tell the jury so.

Col. *Sidney.* But it prepossesses the jury.

Mr. *Keiling* called and sworn.

Att. Gen. I ask you in general, what you know of the rising to have been last spring?

Keiling. My lord, it was some time last summer, Mr. Goodenough came to me, and brought me three papers numbered on the backside; I asked him to what end he delivered them me? He told me, one was for myself, and I was to

deliver the other two to whom I could trust in the two divisions. I asked him, what was the design? He said, to raise men. Says I, do you design a general insurrection? He said, if he did not, if the king was taken off this would do well; for then people would know how to have recourse to a formidable body. And I have heard him say, that colonel Sidney, whom I don't know, had a considerable part in the management of that affair.

Att. Gen. We charge him with conspiring, and there must be confederates in the case, now then we come to the prisoner, we will call my lord Howard, that was one of the persons that did consult.

The lord *Howard* sworn.

Att. Gen. Pray acquaint my lord and the jury of your knowledge, of what transactions there have been with the prisoner about this affair of the general rising.

Lord *Howard.* Truly, my lord, in the entering of the evidence I am about to give, I cannot but observe, what a natural uniformity there is in truth. For the gentlemen that that have been before have so exactly instanced, in every particular, with what I have to say, the two tallies could not more exactly fall into one another, though I confess I had not seen their faces, till the Plot broke out, for some months before.

My lord, and gentlemen of jury, about the middle of January last, it was considered by some of us that met together, that it was very necessary and expedient to an enterprize that had been long in hand, and fallen flat then, that it should be revived by some consult or cabal, that should be set up to give life to it, and governance to the motions of it. The first (for ought I knew) movers of this were the duke of Monmouth, the gentleman at the bar, and myself: And there we did agree, that we should bethink ourselves of some few, we were willing it should not exceed five, at the most seven. This agreement being at first between us three; I remember the duke of Monmouth undertook to engage my lord Russell, and my lord Salisbury; and this gentleman colonel Sidney for my lord of Essex, and Mr. Hambden; and these being put together, did presently constitute a little cabal, of as great a number as was intended. This being settled among them, it was within a few days after, I cannot certainly tell when, but between the middle and latter end of January that I was told, that the persons had agreed to enter into this conjunction of councils; and in order to that, they had appointed a meeting at Mr Hambden's house, to which I was invited This, in time, was between the middle and latter end of January, but I cannot tell exactly. When we came there, there were all those gentlemen I before named, the duke of Monmouth, my lord Essex, my lord Russell, colonel Sidney, Mr. Hambden, and myself. It was at Mr. Hambden's house which ranges on the same row with Southampton house: And being met, Mr. Hambden, I suppose, did think it most properly belonged to him to take upon him the part as it were to open the sessions, that was, to give us a little account of the reason, end, and intention of that meeting: In which discourse, he took occasion to recapitulate some design, that had been before chiefly carried on by my lord Shaftesbury, before this time dead; and also took notice of the ready disposition and inclination of the minds of men to go on with it; and did give one instance of his judgment of it, that it being a design communicated to so many, it had not been so much as revealed, or a murmur or whisper gone about it: From whence he took occasion to tell us, that it was absolutely necessary for the future, there should be some council that should be as a spring, a little to guide and govern the motions of the rest, for that there were divers things to be taken care of, which if not taken care of by particular persons, would all miscarry. This was the substance of the prologue and introduction he made. From hence he made a transition to some particular things, that he thought were most principally to be taken care of. And though it is impossible for me to remember the order and method in which we discoursed, or who said this or that; but that which the sense of all resulted to was this: That since we did not come prepared for it, we should consider what were the things that would hereafter challenge our particular care, that was, the time when, the places where, and the persons by whom these things should be carried on. This led into some particular discourse concerning some of these heads: For the time, that it should be shortly, lest the minds of men should chill; and then as to the place where, whether in city or country, or both jointly. In all these, some opinions were given, but not settled to any resolution, but they were committed to our thoughts to be digested afterwards. But these being the things that every one was to take upon his thoughts, there was this pre-requisite to the undertaking, and that was to consider what magazines were to be got; and that led to another particular, which was, with what they should be gotten, and that was money; and thereupon was propounded a considerable sum to be raised: and, as I remember, the sum propounded by the duke of Monmouth was 25,000*l.* or 30,000*l.* And then it was considered, how it should be raised without drawing observation or jealousy. These are only the heads that were then agreed on, hereafter to be better considered. But the present resolution that was taken, was, that before any procedure was made in any of these things, or any advance towards the undertaking; the first thing to be considered was, how to make a coalition of councils between Scotland, and what we were doing here; and for that purpose, we should bethink ourselves of some fit person to be sent thither, to unite us into one sense and care. This is as much as occurs to my memory upon that meeting. About a fortnight or three weeks

after, which I suppose carried it to the middle of February next, we had another meeting, and that was at Southampton-house at my lord Russell's, and there were every one of the same persons; and when we came there, there happened to fall in a discourse which I know not how it came in, but it was a little warmly urged, and thought to be untimely, and unseasonable; and that I remember was by Mr. Hambden, who did tell us, That having now united ourselves into such an undertaking as this was, it could not but be expected, that it would be a question put to many of us; To what end all this was? Where it was we intended to terminate? Into what we intended to resolve? That these were questions he met with; and it was probable, every one had or would meet with from these persons whose assistance we expected; and that if there was any thing of a personal interest designed or intended, that there were but few of those, whose hearts were now with us, but would fall off: And therefore, since we were upon such an undertaking, we should resolve ourselves into such principles, as should put the properties and liberties of the people into such hands, as it should not be easily invaded by any that were trusted with the supreme authority of the land; and it was mentioned to resolve all into the authority of the parliament. This was moved by him, and had a little harshness to some that were there; but yet upon the whole matter we generally consented to it, That it was nothing but a public good that we all intended. But then after that, we fell to that which we charged ourselves with at the first meeting, and that was concerning sending into Scotland, and of settling an understanding with my lord of Argyle: And in order to this, it was necessary to send a messenger thither to some persons, whom we thought were the most leading men of the interest in Scotland: This led us to the insisting on some particular persons; the gentlemen named, were my lord Melvin, sir John Cockram, and the Campbells; I am sure it was some of the alliance of my lord of Argyle, and I think of the name. As soon as it was propounded, it was offered by this gentleman colonel Sidney, that he would take the care of the person; and he had a person in his thoughts, that he thought a very fit man to be intrusted; one or two, but one in special, and he named Aaron Smith to be the man, who was known to some of us, to others not; I was one that did know him, and as many as knew him, thought him a proper person. This is all that occurs to me that was at the second meeting, and they are the only consults that I was at.

Att. Gen. What was he to do?

Lord *Howard.* There was no particular deed for him, more than to carry a letter. The duke of Monmouth undertook to bring my lord Melvin hither, because he had a particular dependence upon him, and I think some relation to his lady: But to sir John Cockram there was a letter to be sent under the disguise of carrying on some business of the plantation in Carolina. This letter I suppose was writ by my lord Russell (though I know it not) for he was personally known to my lord Russell, and I don't know that he was known to any of us. About three weeks after this, then he was dispatched I suppose.

Att. Gen. To what purpose were the gentlemen to come up?

Lord *Howard.* These were to acquaint us how they found Scotland tempered, and what opportunities or advantages there were or might be of putting them into a commotion, and how men might be raised, and how they would fall under Argyle, and also to keep time and place with us. After this, I was with colonel Sidney, when he was going into London, and he did take out several guineas, I can't tell how much it was, I suppose they might be about sixty, and put them into his pocket (and set me down at my lodging) which he said were to give Aaron Smith; whether he gave it or no, I don't know; and after that he was sent.

Att. Gen. Who told you so?

Lord *Howard.* Colonel Sidney. For I was inquiring of him; and he said, he had not heard of him in three weeks, or but once, when he was about Newcastle. After this, I had occasions that called me into the country, and there I was. Some time after that I went to the Bath: And this is all the account I can give.

Sol. Gen. Do you know that Aaron Smith did go?

Lord *Howard.* I know nothing but by hearsey. Colonel Sidney told me he was gone, and was upon the road, and he heard from him about Newcastle.

L. C. J. Did you understand by the discourse after he was gone, that he went in pursuance of that debate?

Lord *Howard.* Yes, my lord, That was the whole end of his going.

Just. *Withins.* I think you say, that gentleman [speaking to col. Sidney] undertook to send him.

Lord *Howard.* Yes, he did.

L. C. J. Will you ask him any questions?

Col. Sidney. I have no questions to ask him.

Att. Gen. Silence.—You know the proverb. The next step is to shew you, my lord, that these persons came up immediately after Aaron Smith went down thither; and according to that which was said to be the shadow and pretence of their coming hither, they pretended they came about Carolina business. Sir Andrew Foster and Mr. Blathwaite.

Sir *Andrew Foster* sworn.

Att. Gen. Pray, Sir, give an account what Scotch gentlemen came up lately.

Sir A. Foster. My lord, about the end of the spring, or beginning of summer, as I remember, these gentlemen, sir John Cockram, and commissary Monro, and the two Campbels, father and son, came up hither. I did not see the father at all, but I saw the son the day of the lord Russell's trial; but the other two, I

think, I saw a little before the discovery of the plot.

Att. Gen. What did they pretend they came about?

Sir *A. Foster.* They pretended they came to make a purchase in Carolina, and I saw their commission from the persons said to be concerned in that design.

L. C. J. Who do you speak of?

Sir *A. Foster.* Sir John Cockram and commissary Monro.

Att. Gen. As soon as the rumour came of the plot, What became of those gentlemen?

Sir *A. Foster.* Sir John Cockram absconded, but commissary Monro never absconded; and the Campbels I heard were seized changing their lodging from place to place.

Mr. *Atterbury* sworn.

Att. Gen. Mr. Atterbury, will you give my lord and the jury an account what you know of these Scotchmen, their absconding and lying hid.

Atterbury. My lord, upon the latter end of June, or the beginning of July; the beginning of July it was, I was sent for into London upon a discovery of some Scotch gentlemen that lay about Black-Friers; and when I came down there, there was the Common Serjeant and some others had been before me, and found them making an escape into a boat.

Att. Gen. Who were they?

Atterbury. Sir Hugh Campbel, and sir John Cockram, and one that was committed to the Gatehouse by the council, as soon as brought thither.

Att. Gen. We shall end here, my lord: How long had they been in town?

Atterbury. They had been in town some little time.

Att. Gen. We have done with this piece of our evidence. Now, to shew that while this emissary was in Scotland, at the same time the colonel (which will be another overt act of the treason) was writing a treasonable pamphlet. I will call you the witnesses. It is all of his own writings. Sir Philip Lloyd.

Att. Gen. Sir Philip Lloyd, pray will you look upon those papers, and give my lord and the jury an account where you found them.

Sir *P. Lloyd.* I had a warrant, my lord, from the secretary by the king and council, to seize Mr. Algernon Sidney's papers; and pursuant to it, I did go to his house, and such as I found there I put up. I found a great many upon the table, amongst which were these, I suppose it is where he usually writes; I put them in a pillow-bier I borrowed in the house, and that in a trunk; I desired col. Sidney would put his seal upon them, that there should be no mistake; he refused, so I took my seal, and sealed up the trunk, and it was carried before me to Mr. Secretary Jenkins's office. When the committee sat, I was commanded to undo the trunk, and I did so, and found my own seal upon it. And I took the papers out of the bag I put them into before.

L. C. J. Was colonel Sidney present when you seized these papers?

Sir *P. Lloyd.* Yes.

Att. Gen. Are these some of those papers?

Sir *P. Lloyd.* Yes, I verily believe it.

Att. Gen. In the next place, I think we have some papers of his particular affairs which will prove his hand. Call Mr. Sheppard, Mr. Cooke and Mr. Cary.

Mr. *North.* Sir Philip Lloyd, When were they seized?

Sir *P. Lloyd.* Towards the latter end of June, my lord.

Juryman. Which June?

Sir *P. Lloyd.* Last June.

Mr. *Sheppard* sworn.

Att. Gen. Pray, will you look upon those writings. [Shewing the libel.] Are you acquainted with colonel Sidney's hand?

Sheppard. Yes, my lord.

Att. Gen. Is that his hand-writing?

Sheppard. Yes, Sir, I believe so. I believe all these sheets to be his hand.

Att. Gen. How come you to be acquainted with his hand?

Sheppard. I have seen him write the indorsement upon several bills of exchange.

Mr. *Cary* sworn.

Col. *Sidney.* My lord, I desire you would please to consider this, that similitude of hands can be no evidence.

L. C. J. Reserve yourself until anon, and make all the advantageous remarks you can.

Att. Gen. Have you had any dealing with him?

Cary. I never saw him write to my knowledge, more than once in my life, but I have seen his indorsement upon bills, and it is very like that.

L. C. J. Do you believe it is his hand, as far as you can guess?

Cary. My lord, it is like what came to me for his hand-writing.

L. C. J. And you believe it to be his hand?

Cary. Yes.

Mr. *Cooke* sworn, and the papers shewn him.

L. C. J. What say you, Mr. Cooke?

Cooke. My lord, I did never see colonel Sidney write, but I have seen several notes that have come to me with indorsement of his name, and we have paid them, and it is like to this.

L. C. J. And you were never called to account for mispayment?

Cooke. No, my lord.

Att. Gen. I pray it may be read. We will read as much as is necessary to prove the indictment.

Col. *Sidney.* I pray it may be all read.

L. C. J. Mr. Attorney must have what part he desires read, and you shall have what part you will have read afterwards.

Sidney. I desire it may all be read.

Att. Gen. Begin there. "Secondly, There

was no absurdity in this, because it was their own case."

Clerk reads.

"Secondly,* There was no absurdity in this, though it was their own case; but to the contrary, because it was their own case, that is, concerning themselves only, and they had no superior. They only were the competent judges, they decided their controversies, as every man in his own family doth, such as arise between him and his children, and his servants. This power hath no other restriction than what is put upon it by the municipal law of the country, where any man, and that hath no other force, than as he is understood to have consented unto it. Thus in England every man (in a degree) hath a right of chastising them; and in many places (even by the law of God) the master hath a power of life and death over his servant: it were a most absurd folly to say that a man might not put away, or in some places kill an adulterous wife, a disobedient son, or an unlawful servant, because he is party and judge, for the case doth admit of no other, unless he hath abridged his own right by entering into a society where other rules are agreed upon, and a superior judge constituted, there being none such between king and people: that people must needs be the judge of things happening between them and him, whom they did not constitute, that they might be great, glorious, and rich; but that they might judge them, and fight their battles or otherwise do good unto them, as they should direct. In this sense, he that is 'singulis major,' and ought to be obliged by every man, in his just and lawful commands, tending to the public good; and must be suffered to do nothing against it, nor in any respect more than the law doth allow.

"For this reason Bracton saith, that the king hath three superiors, to wit, 'Deum, Legem, et Parliament,' that is, the power, originally in the people of England, is delegated unto the parliament. He is subject unto the law of God as he is a man, to the people that makes him a king, inasmuch as he is a king: the law sets a measure unto that subjection, and the parliament judges of the particular cases thereupon arising: he must be content to submit his interest unto theirs, since he is no more than any one of them, in any other respect, than that he is, by the consent of all, raised above any other.

"If he doth not like this condition he may renounce the crown; but if he receive it upon that condition, (as all magistrates do the power they receive) and swear to perform it, he must expect that the performance will be exacted, or revenge taken by those that he hath betrayed.

"If this be not so, I desire to know of our author, how one or more men can come to be guilty of treason against the king, as 'Lex facit ut sit Rea.' No man can owe more unto him, than unto any other, or he unto every other man by any rule but the law: and if he must not be judge in his own case, neither he nor any other power received from him, would ever try any man for an offence against him, or the law.

"If the king, or such as he appoints, cannot judge him, he cannot be judged by the ways ordinarily known amongst us. If he, or other by authority from him, may judge, he is a judge in his own case, and we fall under that which he accounts the utmost of all absurdities. If a remedy be found for this, he must say that the king in his own case may judge the people, but the people must not judge the king, because it is their's; that is to say, the servant entertained by the master may judge him, but the master must not judge the servant, whom he took only for his own use. The magistrate is bound by no oath or contract to the people that created him, but the people is bound to its own creature, the magistrate.

"This seems to be the ground of all our author's follies; he cannot comprehend that magistrates are for or by the people, but makes this conclusion, as if nations were created by or for the glory or pleasure of magistrates, and affects such a piece of nonsense; it ought not to be thought strange, if he represent as an absurd thing, that the heedless multitude may shake off the yoke when they please. But I would know how the multitude comes under the yoke, it is a badge of slavery. He says, that the power of kings is for the preservation of liberty and property. We may therefore change or take away kings without breaking any yoke, or that made a yoke which ought not to be one; the injury is therefore in making or imposing, and there can be none in breaking it.

"That if there be not an injury, there may perhaps be an inconvenience; if the headless multitude may shake off the yoke.* I know not why the multitude should be concluded to be headless; it is not always so. Moses was head of the multitude that went out of Egypt; Othniel led them against the king of Mesopotamia, under the conduct of Phœbidas; they obtained a victory against the Moabites; they had the like success under Shamger, Barak, Gideon, Jephthah, Samuel, Sampson, and others against the Canaanites, Midianites, Philistines, and others; the multitude that opposed Saul and Ishbosheth had David for its head: and the ten tribes that rejected Rehoboam chose unto themselves Jeroboam; the Athenians rising against the thirty tyrants had Thrasy-

* This passage Ralph inserts in his history, and he observes, that "it was proper to do so (as well as a vicious copy will give leave) not only for the better understanding Mr. Sidney's Case, but because it is no part of that book of his upon Government which has been since published, as some have inadvertently taught."

* This first sentence of this paragraph, Ralph supposes to be a quotation from Filmer.

bulus; those that drave ——— from Thebes were conducted by Pelopidas: when the Romans drave out the Tarquins, they chose Brutus and Publicola, and they destroyed the Decemviri under Horatius and Valerius. All the multitudes that afterwards revolted from them under Mauritius, Telerius, Spartanus, and others, were not headless; and we know of none that were, but all either found heads, or made them. The Germans set up Arminius; the Britons, and others in later times; the Cartinians, that rose against Peter the Cruel, had the Lord Detracta Mara.

"The French, when they grew weary of the corrupted races of Pharamond and Pepin, and the same Pepin and Hugh Capet: the Scots, when they slew James 3, had his son to be their head; and when they deposed and imprisoned queen Mary, the earl of Murray and others supplied the want of age that was in her son: and in all the revolutions we have had in England, the people have been headed by the parliament, or the nobility and gentry that composed it; and when the kings failed of their duties, by their own authority called it. The multitude therefore is not ever headless, but doth either find or create heads unto itself, as occasion doth require: and whether it be one man, or a few or more, for a short or a longer time, we see nothing more regular than its motions. But they may, saith our author, shake off the yoke; and why may they not, if it prove uneasy or hurtful unto them? Why should not the Israelites shake off the yoke of Pharaoh, Jabin, Sisera, and others that oppressed them?

"When pride had changed Nebuchadnezzar into a beast, what should persuade the Assyrians not to drive him out amongst beasts, until God had restored unto him the heart of a man? When Tarquin had turned the regal monarchy of Rome into a most abominable tyranny, why should they not abolish it? And when the Protestants of the Low Countries were so grievously oppressed by the power of Spain, under the proud, cruel, and savage conduct of the duke of Alva, why should they not make use of all the means that God had put into their hands for their deliverance? Let any man, who sees the present state of the Provinces that then united themselves, judge whether it is better for them to be as they are, or in the condition unto which his fury would have reduced them, unless they had, to please him, renounced God and their religion: our author may say, they ought to have suffered: the king of Spain by their resistance lost those countries; and that they ought not to have been judges in their own case. To which I answer, that by resisting they laid the foundation of many churches, that have produced multitudes of men, eminent in gifts and graces; and established a most glorious and happy commonwealth, that hath been since its first beginning, the strongest pillar of the Protestant cause now in the world, and a place of refuge unto those who in all parts of Europe have been oppressed for the name of Christ: whereas they had slavishly, and, I think I may say, wickedly as well as foolishly suffered themselves to be butchered, if they had left those empty provinces under the power of Antichrist, where the name of God is no otherwise known than to be blasphemed.

"If the king of Spain desired to keep his subjects, he should have governed them with more justice and mercy; when contrary unto all laws, both human and divine, he seeks to destroy those he ought to have preserved, he can blame none but himself, if they deliver themselves from his tyranny: and when the matter is brought to that, that he must not reign, or they over whom he would reign, must perish; the matter is easily decided, as if the question had been asked in the time of Nero or Domitian, Whether they should be left at liberty to destroy the best part of the world, as they endeavoured to do, or it should be rescued by their destruction? And as for the people's being judges in their own case, it is plain, they ought to be the only judges, because it is their own, and only concerns themselves."

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Att. Gen. The latter end, the last sheet of all, sect. 35.

L. C. J. The argument runs through the book, fixing the power in the people.

Cl. of Cr. "The general revolt of a nation from its own magistrates, can never be called rebellion."

Att. Gen. Sect. 37.

Cl. of Cr. "The power of calling and dissolving parliaments is not in the king."

Att. Gen. So much we shall make use of; if the colonel please to have any other part read to explain it, he may.

Then the sheets were shewn to col. Sidney.

Col. Sidney. I do not know what to make of it, I can read it.

L. C. J. Ay, no doubt of it, better than any man here. Fix on any part you have a mind to have read.

Sidney. I do not know what to say to it, to read it in pieces thus.

L. C. J. I perceive you have disposed them under certain heads: to what heads would you have read?

Sidney. My lord, let him give an account of it that did it.*

* "Sidney, having taken advantage of a circumstance, that only partial passages of the writings which were produced against him were quoted, and even betraying some warmth in defence of the writings themselves; Jeffreys hoped to draw him into an avowal, that he was the author: with this view, he handed the papers to Sidney, and desired him to take off the force of the passages by any others in the book. Sidney saw the snare, but pretended not to see it: he turned over the leaves with a seemingly grave attention, and then returning them to the bench said, "Let the man who

Att. Gen. My lord, we will not delay col. Sidney from entering on his defence, only we have this piece of evidence to give further. One of his accomplices was my lord Russell, we will give in evidence his conviction. We will only ask my lord Howard, was your lordship sworn as a witness at the trial of my lord Russell?—Lord *Howard.* Yes *

Att. Gen. Whether or no, when you met, were there in those debates any reflections upon the king, that he had broken his duty?

Lord *Howard.* Not that I remember.

Att. Gen. Why would you rise?

Lord *Howard.* If you mean upon the misgovernment, not personally upon the king?

Att. Gen. Ay.

Lord *Howard.* Yes, and principally and chiefly that, which we thought was the general disgust of the nation, the imposing upon the city at that time.

Just. *Withens.* That was complained of at that time.

Lord *Howard.* Yes, my lord, we took it all along to be the chief grievance.

L. C. J. Have you any more witnesses?

Att. Gen. Only the record.

Sol. Gen. I know there is no time misspent to make things clear. If the jury have a mind to have the words read again——

L. C. J. If they have a mind, let it.

Then Mr. Trinder was sworn, and testified it to be a true copy of the record, and said he examined it at Fishmonger's-Hall with Mr. Tanner.

Then the Record of the Conviction of lord Russell was read.

L. C. J. What will you go to next, Mr. Attorney?

Sol. Gen. We have done, unless the jury desire to have the words of the libel read again. [But they did not.]

Sidney. My lord, I desire to know upon what statute I am indicted.

Att. Gen. My lord, I will give as plain an answer, you are indicted upon the old statute of 25 Edw. 3.

Sidney. Then I desire to know upon what branch of that statute?

Att. Gen. Why, I will acquaint you, it is upon the first branch of that statute, for conspiring and compassing the death of the king.

Sidney. Then I conceive, what does not come within that, does not touch me.

Att. Gen. Make what inferences you please, colonel, we will answer you.

Sidney. I desire to know what the witnesses have sworn against me upon that point?

Att. Gen. Go on, you have heard the witnesses as well as we.

L. C. J. He says you are indicted upon the statute of 25 Edw. 3, which statute makes it high-treason to conspire the death of the king; and the overt-act is sufficiently set forth in the indictment; now the question is, whether it is proved.

Sidney. They have proved a paper found in my study of Caligula and Nero. That is compassing the death of the king, is it?

L. C. J. That I shall then tell the jury. The point in law you are to take from the Court, gentlemen: whether there be fact sufficient, that is your duty to consider.

Sidney. I say, my lord, that since I am indicted upon that statute, I am not to take notice of any other. I am indicted for conspiring the death of the king, because such a paper is found in my house; under favour, I think that can be nothing at all to me. For though sir Philip Lloyd did ask me, whether I would put my seal to it, he did not ask me until he had been in my closet, and I knew not what he had put in, and so I told him I would not do it. Then came these gentlemen upon similitude of hands. My lord, we know what similitude of hands is in this age. One told me within these two days, that one came to him, and offered to counterfeit any hand he should shew him in half an hour. So then, my lord, I have nothing to say to these papers. Then for point of witness, I cannot be indicted, much less tried or condemned on 25 Edw. 3, for by that act there must be two witnesses to that very branch unto which the treason does relate, which must be distinguished. For the levying of war, and conspiring the death of the king are two distinct things, distinct in nature and reason, and so distinguished in the statute. And therefore the conspiring the death of the king is treason, and the other not. 1 Edw. 6, 12. 5 Edw. 6, 11, does expressly say, there must be two witnesses to either of these acts. Now here is my lord Howard, (I have enough to say of him by and by) it is he only who speaks of six men, whom he calls a select council, and yet selected by no man in the world. I desire to know who selected my lord Howard? Who selected me? If they were selected by nobody, it is a bull to say they were a select council: if they were not selected, but erected themselves into a cabal then, they have either confidence in one another, or find they are near equally able to assist in the design. Here is nothing of all this,—these six men were strangers to one another. For my own part, I never spake with the duke of Monmouth above three times in my life, and one time was when my lord Howard brought him to my house and cozened us both. He told the duke I invited him, and he told me the duke invited himself, and neither of them was true. Now that such men as these are, not hardly knowing one another, should presently fall into a great and intimate friendship, and trust and management of such a business as this is, is a thing utterly inprobable, unless they were mad. Now I do find in my lord Howard's deposition against my lord Russell, that they were in prosecution of my lord Shaftsbury's design;

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wrote these papers reconcile what is contained in them."" Dalrymple. [He cannot repeat any thing faithfully.] The remark is taken from Ralph.

* See p. 602, of this volume.

and yet he acknowledges the duke of Monmouth said he was mad, and he said himself so too. Now that they should join with four more in the prosequtión of the design of a mad-man, they must be mad too. Now whether my lord Howard would have you think he was mad, because a mad-man cannot be guilty of treason, I cannot tell. My lord Howard in his last deposition at my lord Russell's trial, fixes the two meetings, one about the middle of January, the other ten days after: now he fixes one to be the latter end of January, the other the middle of February. Then he makes it to be the prosecution of my lord Shaftesbury's design. I do not find that any one there had any thing to do with my lord Shaftesbury, for my part I had not. I had not seen his face in two years. Then, my lord, that I go upon is, whatever my lord Howard is, he is but one witness. The law of God and the law of man, understood and taken by all men, does require two witnesses; Moses says so, so the apostles the same after him, and Christ says the same, that every matter is to be established by two witnesses. There ought to be two witnesses to the same thing. Now for one to come and tell a tale of a tub, of an imaginary council, and another of a libel, a paper written no body knows when, is such a thing you can never go over it. But if the law of God be, that there must be two witnesses to the same fact, there is an end of this matter. And under the judicial law, the penalty would be in this case, to put a man to death. Now here there are but two things, which if allowed of, nobody will be safe for perjury. The one is to suffer men to give their testimony, one to one thing, and another to another, that the fraud cannot be discovered; and the other is to take away the punishment. Now the punishment is taken away in some measure: and do but take away the other point, whereby the fraud cannot be discovered; and then there is no defence can be made. That both witnesses should be to the same point; see the story of Susanna. Two elders testified they saw her in the act of adultery: they were carrying of her to death; both of them said the same thing; until they were taken asunder and examined, the fraud was not discovered; and then one said, she was under a tree of the right hand, and the other, under the tree on the left; and she escaped and they were punished. But now if you apply it to several facts, my lord Howard may say what he pleases, and if another shall come with a supplemental proof, no justice can be had. But, my lord, I desire this, if there be two witnesses to prove the conspiracy, and in that there were those matters done that are treason, I must answer to it; but if there be not, I presume I need say nothing to it. If you do not allow it me, I desire counsel to argue it.

L. C. J. That is a point of fact, whether there be two witnesses. I tell you beforehand, one witness is not sufficient.

Sidney. Why then there is my lord Howard, and never another.

L. C. J. Nay, do not make those inferences; I will tell the jury, if there be not two witnesses, as the law requires in this case, they ought to acquit you.

Sidney. You confound me, I cannot stir. You talk of a conspiracy; what is a conspiracy to kill the king? Is there any more witnesses than one for levying of war?

L. C. J. Pray do not deceive yourself; you must not think the Court and you intend to enter into a dialogue. Answer to the fact; if there be not sufficient fact, the jury will acquit you. Make what answer you can to it.

Sidney. Then I say there being but one witness, I am not to answer to it at all.

L. C. J. If you rely upon that, we will direct the Jury presently.

Sidney. Then for levying war, what does any one say? My lord Howard, let him, if he please, reconcile what he has said now, with what he said at my lord Russell's trial. There he said, he said all he could; and now he has got I do not know how many things that were never spoken of there. I appeal to the court, whether he did then speak one word of that, that he now says of Mr. Hambden. He sets forth his evidence very rhetorically, but it does not become a witness, for he is only to tell what is done and said, but he does not tell what was done and said. He says, they took upon them to consider, but does not say what one man said, or what one man resolved, much less what I did. My lord, if these things are not to be distinguished, but shall be jumbled all up together, I confess I do not know what to say.

L. C. J. Take what liberty you please. If you will make no defence, then we will direct the jury presently. We will direct them in the law, and recollect matter of fact as well as we can.

Sidney. Why then, my lord, I desire the law may be reserved to me, I desire I may have counsel to that point of there being but one witness.

L. C. J. That is a point of fact. If you can give any testimony to disparage the witness, do it.

Sidney. I have a great deal to that.

L. C. J. Go on to it then.

Sidney. Then, my lord, was there a war levied? Or was it prevented? Why then, if it be prevented, it is not levied; if it be not levied, it is not within the statute; so this is nothing to me.

L. C J. The court will have patience to hear you; but at the same time I think it is my duty to advertise you, that this is but misspending of your time. If you can answer the fact, or if you have any mind to put any disparagement upon the witnesses, that they are not persons to be believed, do it, but do not ask us questions this way or the other.

Sidney. I have this to say concerning my lord Howard: he hath accused himself of divers treasons, and I do not hear that he has his pardon of any: He is under the terror of those treasons, and the punishment for them: he

hath shewn himself to be under that terror: he hath said, that he could not get his pardon, until he had done some other jobs, 'till he was past this drudgery of swearing: that is, my lord, that he having incurred the penalty of high-treason, he would get his own indemnity by destroying others. This by the law of God and man, I think, destroys a man's testimony. Besides, my lord, he is my debtor, he owes me a considerable sum of money I lent him in time of his great necessity; he made some covenants with me for the payment of that money, which he hath broken; and when his mortgage was forfeited, and I should take the advantage the law gives me, he finds out a way to have me laid up in the Tower: he is a very subtle man: at my lord Russell's trial, he carried his knife, he said, between the paring and the apple; and so this is a point of great nicety and cunning, at one time to get his own pardon, and at the same time to save his money. Another thing, my lord, is, when I was prisoner, he comes to my house, and speaks with my servant, and says, how sorry he was that I should be brought in danger upon this account of the plot, and there he did in the presence of God, with hands and eyes lifted up to heaven, swear he did not believe any plot, and that it was but a sham; and that he was confident if I had known any thing, I would have told it him. He hath said somewhat of this before, I have several witnesses to prove both. He was desirous to go further, and he would not only pay my debt by his testimony against me, but he would have got my plate and other goods in my hands into his hands, and he desired my men, as a place of trust, to put them into his hands. And the next news was, that there was a warrant against my lord Russell and me. But then, my lord, he made other affirmations in the same presence of God, that I was innocent in his opinion, and he was confident of it; for if he had known any thing of it, he would have told it. Now I know, in my lord Russell's case, there was Dr. Burnet said something like it. And when he came to answer it, he said he was to face it out, and make the best of it he could. Now he did face it out bravely against God, but he was very timorous of man. So that my lord, he does say at the same time, at my lord Russell's trial, upon his oath, that he did believe that the religious obligation of an oath, did not consist in the formality of applying it to the place, &c. but in calling God to witness. So that when he did call God to witness before Dr. Burnet and my servant, and others, and this is not consistent with the oath he has taken here, as the gentleman said at my lord Russell's trial, unless he has one soul in court, and had another at my house, these things are inconsistent, and cannot be true; and if he swear both under the religion of an oath, he swears himself perjured. Then, my lord, he talks of Aaron Smith, what have I to do with Aaron Smith? he says, I sent him; my lord, there is nobody else speaks a word of it. Then by a strange kind of construction and imagination, they will have it, that some papers here, which are said to be found in my study, have relation to this plot, as they call it; I know of none, nor am in none. Now, my lord, I am not to give an account of these papers, I do not think they are before you, for there is nothing but the similitude of hands offered for proof. There is the like case of my Lady Carr* some few years ago: she was indicted of perjury, and as evidence against her, some letters of hers were produced, that were contrary to what she swore in Chancery, and her hand was proved; that is to say, it was like it: but my lord chief justice Keiling directs the jury, that though in civil causes it is a proof, yet it is the smallest and least of proofs; but in criminal cases it was none at all."

* This case of Lady Carr is reported, 2 Keb. 516, 1 Siderf. 418; but the point, for which Sidney here referred to it, concerning evidence of hand-writing, is wholly omitted in Keble, and but very indistinctly noticed in Siderfin. In the act for reversing the attainder of Sidney (see it at the end of the Case) it is recited that the 'paper found in the closet of the said A. S. supposed to be his hand-writing, was not proved by the testimony of any one witness to be written by him; but the jury was directed to believe it by comparing it with other writings of the said A. S.' but this recital does not agree with this report of Sidney's trial. According to this report Cary and Cooke swore to their belief that the paper was of the prisoner's hand-writing, from its resemblance to indorsements on bills which they had reason to believe were written by him: but Sheppard went farther and swore that he was acquainted with the prisoner's hand, and that he derived this acquaintance from seeing him write indorsements on several bills of exchange. At this day, such a comparison of writings as is recited in the act for reversal of Sidney's attainder would not be allowed as proof in any case civil or criminal. See Gilb. Law of Evidence (where, however, a distinction as to this, is unsatisfactorily taken, between civil and criminal cases) Hawk. P. C. Book 2, c. 46, s. 52, et seq. Peake's Law of Evidence, Ch. 2, s. 4. The following note of mine is, I apprehend, of the case reported by Mr. Peake (Nisi Prius 20) by the name of Macferson *v.* Thoytes.

Guildhall, Sittings after Michs. Dec. 11, 1790.

"Macfarland *v.* Thoyts. Action against acceptor of a Bill of Exchange drawn by Parry in favour of his own order. Of course the drawer's hand at the foot of the draft was held confessed by the acceptance, but his indorsement could not be proved. Bearcroft (who afterwards asserted that in fact there was no such person as Parry, but that Thoyts was the only party) wanted the hands writing of the signature at the foot and of the indorsement to be compared. Sed per Kenyon. That cannot be done, Do not you know the old case of Al. Sydney? I remember Sir Joseph Yates once very well said, that all evidence ought to be adapted to those

So that my lord Howard's testimony is single; and what he talks of those two businesses that he calls a consult, and Aaron Smith, is destroyed by want of proof. What could six men do? Can my lord Howard raise five men by his credit? by his purse? Let him say as much for me, with all my heart; for my part, I do not know where to raise five men. That such men as we are, that have no followers, should undertake so vast a design is very unlikely: and this great design that was carried on thus, it had neither officers nor soldiers, no place, no time, no money for it. That which he said last time, which he forgot now, he talked of 25, or 30,000*l.* but no man knew where it was to be had, but last time he said, it was spoken in jest. Now this is a pretty cabal, that six men should meet about a business, and they neglect every one of the points relating to the thing they met about, make no step about the business, and if any one did speak of it, it was but in jest. This is a very deep maintaining of the Plot. Then, my lord, as to these papers, I do not think I am to give any account of them, I would say nothing to the disparagement of sir Philip Lloyd, I never saw him till he came to my house, but yet I say he is the king's officer, and when I am prosecuted at the king's suit, I think he ought to be no witness. The government of France is violent and absolute, but yet a few years ago, a minister of state had his papers taken from him, and abundance of them had dangerous plots against the king in them; but because they were inventoried in his officers presence, or those deputed by him, there was no use could be made of them, it was an irreparable fault in the process, and that saved him. The similitude of hands is nothing: W know that hands will be counterfeited, so that no man shall know his own hand. A gentleman that is now dead, told me, that my lord Arlington about five years ago, desired him to write a letter, and seal it as well as he could; he writ it with care, and sealed it with a wafer and wax upon it, and within a few days, my lord Arlington brought him five letters, and he did not know which was his own. The attorney shews these papers to me, I do not know whether they are my own or no; but these very papers, such as they are, do abhor, as much as any one can, such a design. Look upon them, you see they are all old ink. These papers may be writ, perhaps, these twenty years, the ink is so old. But, my lord, it is a polemical discourse, it seems to be an answer to Filmar, which is not calculated for any particular government in the world: It goes only upon these general principles, that according to the universal law of God and nature, there is but one government in the world, and that is intire and absolute; and that the king can be bound by no law, by no oath; but he may take all laws, and abolish them as he pleases: And this whether of age or no, a man, or a child of sense, or out of his sense. Now, my lord, what if any man in his cabinet should have written this book? Then he has another principle, he says, it is the same thing whether a king come in by election, by donation, by inheritance, or usurpation, or any other way; than which, I think, never was a thing more desperately said. Cromwell, when one White, a priest, wrote a book, wherein he undertook to prove, that possession was the only right to power, though he was a tyrant, and a violent one, (you need not wonder I call him tyrant, I did so every day in his life, and acted against him too) it would be so odious a principle, he would not endure it, and he used him very slightly for it. Now this Filmar, that no man must write against, is the man that does assert it, that it is no matter how they come by their power, and gives the same power to the worst userpers, as they that most rightly come to the crown. By the same argument, if the arrantest rascal of Israel had killed Moses, David, &c. and seized upon the power, he had been possessed of that power, and been father of the people. If this be doctrine, my lord, that is just and good, then I confess it may be dangerous for any thing to be found in a man's house contrary to it; but if a commoner of England write his present thoughts, and another man looking on his book writes his present thoughts of it, what great hurt is there in it? And I ask Mr. Attorney how many years ago that was written.

who are to try. Proof by comparison of hands would be no proof at all to a juryman who could not read. Non-suit the plaintiff. Other indorsements on the back of the Bill had been proved."

Note "When the Trial of Sidney was printed, Jefferies ordered what he thought proper to be struck out; particularly what col. Sydney had objected of the jury not being freeholders." Collins's Peerage. Vol. 2, Pt. 1, p. 104, ed. of 1735, art, Sydney, earl of Leicester.

The printed Trial indeed, "does not seem to be given with the candour and impartiality which are essential to a record. It was, however, but natural that the prejudices of the court should be propagated by the press: and we are to wonder that any justice was done to the prisoner's plea in the report; when so little was done to the same plea in the trial and sentence." Ralph.

L. C. J. I don't know what the book was in answer to. We are not to speak of any book that sir Robert Filmar wrote, but you are to make your defence, touching a book that was found in your study, and spend not your time, and the court's time, in that which serves to no other purpose, than to gratify a luxuriant way of talking that you have. We have nothing to do with his book, you had as good tell me again, that there was a parcel of people rambling about, pretending to my lord Russell's ghost, and so we may answer all the comedies in England. Answer to the matter you are indicted for. Do you own that paper?

Sidney. No, my lord.

L. C. J Go on then, it does not become us

to be impatient to hear you, but we ought to advertise you, that you spend not your time to no purpose, and do yourself an injury.

Sidney. I say first, it is not proved upon me; and secondly, it is not a crime if it be proved.*

L. C. J. You began very materially in one thing; it is material for you to apply yourself to take off the credibility of my lord Howard, that is a witness; call your witnesses to that purpose, or if you have any other point to take away the credibility of any other witness.

Sidney. My lord, I have seven or eight points of law.

L. C. J. I hear not one yet.

Sidney. Why, my lord, conspiring to levy war is not treason, and I desire to have counsel upon that.

L. C. J. It is not a question. You had as good ask me, whether the first chapter in Littleton be law.

Sidney. My lord, I have neither made war, nor conspired to levy war.

L. C. J. You are still in a mistake, you shall not think that we intend to dialogue with you, to let you know how far the proof hath been given or not given, but when we come to direct the jury, then we shall observe how far the law requires there should be two witnesses. But whether there be such a proof, that must be left to the jury.

Just. *Withins.* If you agree the conspiracy, I will tell you my mind of it; I cannot give you my opinion in law, till the fact be stated.

L. C. J. The law always arises upon a point of fact; there can be no doubt in point of law, till there be a settlement in point of fact.

Just. *Holloway.* My lord has put you in a right way: The conspiracy is proved but by one witness, if you have any thing to take off his credibility, it is to the purpose.

Sidney. Truly, my lord, I do as little intend to mis-spend my own spirit, and your time, as ever any man that came before you. Now, my lord, if you will make a concatenation of one thing, a supposition upon supposition, I would take all this asunder, and shew, if none of these things are any thing in themselves, they can be nothing joined together.

L. C. J. Take your own method, Mr. Sidney; but I say, if you are a man of low spirits and weak body, it is a duty incumbent upon the court, to exhort you not to spend your time upon things that are not material.

Sidney. My lord, I think it is very material, that a whimsical imagination of a conspiracy should not pass for a real conspiracy of the death of the king; besides, if these papers were found in my house, it is a crime created since my imprisonment, and that cannot come in, for they were found since. My lord, if these papers are right, it mentioned 200 and odd sheets, and these shew neither beginning nor ending; and will you, my lord, indict a man for treason for scraps of paper found in his house, relating to an ancient paper, intending as innocently as any thing in the world, and piece and patch this to my lord Howard's discourse, to make this a contrivance to kill the king? Then, my lord, I think it is a right of mankind; and it is exercised by all studious men, that they write in their own closets what they please for their own memory, and no man can be answerable for it, unless they publish it.

L. C. J. Pray do not go away with that right of mankind, that it is lawful for me to write what I will in my own closet, unless I publish it; I have been told, Curse not the king, not in thy thoughts, not in thy bedchamber, the birds of the air will carry it. I took it to be the duty of mankind, to observe that.

Sidney. I have lived under the Inquisition——

L. C. J. God be thanked we are governed by law.

Sidney. I have lived under the Inquisition, and there is no man in Spain can be tried for heresy——

Justice *Withins.* Draw no precedents from the Inquisition here, I beseech you, Sir.

L. C. J. We must not endure men to talk, that by the right of nature every man may contrive mischief in his own chamber, and he is not to be punished, till he thinks fit to be called to it.

Sidney. My lord, if you will take scripture by pieces, you will make all the penmen of the scripture blasphemous; you may accuse David of saying, There is no God; and accuse the Evangelists of saying, Christ was a blasphemer and a seducer; and the Apostles, That they were drunk.

L. C. J. Look you, Mr. Sidney, if there be any part of it that explains the sense of it, you shall have it read; indeed we are trifled with a little. It is true, in scripture it is said, there is no God, and you must not take that alone,

* "Nothing," observes Ralph, "was ever said more pertinently than this; and every man of common sense must perceive, that if he had kept to these two propositions, he must have had the best of the argument: But the shrewd chief justice, who saw the opening, and dreaded the consequence, with as much wickedness as artifice, put him immediately on another scent, namely, to take off the credibility of lord Howard's evidence; and thereby bewildered him, under the pretence of shewing him a nearer way.—The colonel, with all his circumspection, was now over-reached: It flattered his passions to expose lord Howard, and it also seemed favourable to his cause: And though he did not immediately forego that part of his defence which depended on reason and argument, he was at last wrangled out of his method; and, by being in a manner compelled to call his witnesses prematurely, lost the great benefit of the many plain, strong, and clear inferences, that naturally and necessarily must have arisen from it."

but you must say, The fool hath said in his heart, there is no God. Now here is a thing imputed to you in the libel; if you can say, there is any part that is in excuse of it, call for it. As for the purpose, whosoever does publish that the king may be put in chains or deposed, is a traitor; but whosoever says, that none but traitors would put the king in chains, or depose him, is an honest man; therefore apply *ad idem*, but do not let us make excursions.

Sidney. If they will produce the whole, my lord, then I can see whether one part contradicts another.

L. C. J. Well, if you have any witnesses, call them.

Sidney. The earl of Anglesey.

L. C. J. Ay, in God's name, stay till to-morrow in things that are pertinent.

Sidney. I desire to know of my lord Anglesey, what my lord Howard said to him concerning the Plot that was broken out.

Ld. *Anglesey.* Concerning this Plot you are now questioned for?

Sidney. The Plot for which my lord Russell and I was in prison.

Ld. *Anglesey.* The question I am asked, is, What my lord Howard said before the trial of my lord Russell, concerning the plot; I suppose, this goes as a branch of that he was accused for. I was then in the country when the business was on foot, and used to come to town a day or two in a week, living near in Hertfordshire, and I understanding the affliction my lord of Bedford was in, I went to give my lord a visit, we having been acquaintance of above 50 years standing, and bred together in Maudlin college in Oxford. When I came to my lord of Bedford, and had administered that comfort that was fit for one christian to give another in that distress, I was ready to leave him, and my lord Howard came in. It was upon Friday before my lord Howard was taken, he was taken (as I take it) upon Sunday or Monday, my lord Howard fell into the same christian office that I had been just discharging, to compassionate my lord's affliction, to use arguments to comfort and support him under it, and told him he was not to be troubled, for he had a discreet, a wise and a virtuous son, and he could not be in any such plot (I think that was the word he used at first, though he gave another name to it afterward) and his lordship might therefore well expect a good issue of that business, and he might believe his son secure, for he believed he was neither guilty, nor so much as to be suspected. My lord proceeded further, and did say, that he knew of no such barbarous design (I think he called it so in the second place) and could not charge my lord Russell with it, nor any body else. This was the effect of what my lord Howard said at that time, and I have nothing to say of my own knowledge more than this; but to observe, that I was present when the jury did put my lord Howard particularly to it; What have you to say to what my lord Anglesey testifies against you? My lord, I think, did in three several places give a short account of himself, and said it was very true, and gave them some further account why he said it, and said he should be very glad it might have been advantageous to my lord Russell.

Sidney. My lord of Clare. I desire to know of my lord of Clare what my lord Howard said concerning this plot and me?

Ld. *Clare.** My lord, a little after colonel Sidney was taken, speaking of the times, he said, that if ever he was questioned again, he would never plead, the quickest dispatch was the best, he was sure they would have his life, though he were ever so innocent, and discoursing of the late primate of Armagh's prophecy; for my part, says he, I think the persecution is begun, and I believe it will be very sharp, but I hope it will be short, and I said I hoped so too.

Att. Gen. What answer did your lordship give to it?

Lord *Clare.* I have told you what I know, my lord is too full of discourse for me to answer all he says; but for col. Sidney, he did with great asseverations assert, that he was as innocent as any man breathing, and used great encomiums in his praise, and then he seemed to bemoan his misfortune, which I thought real; for never was any man more engaged to another, than he was to colonel Sidney, I believe. Then I told, they talked of papers that were found; I am sure, says he, they can make nothing of any papers of his.

Att. Gen. When was this?

Lord *Clare.* This was at my house the beginning of July.

Att. Gen. How long before my lord Howard was taken?

Lord *Clare.* About a week before.

Att. Gen. I would ask you, my lord, upon your honour, would not any man have said as much, that had been in the plot?

Lord *Clare.* I can't tell, I know of no plot.

* "It ought not to be forgotten, that the earl of Clare was one of the petitioning and protesting lords: And, possibly, it was for this reason that the attorney general laid two snares for him, in the course of his evidence; both which he nevertheless broke through. His lordship, in repeating what lord Howard had said of Usher's prophecy, and his hoping the persecution would be short, if sharp, added these words, 'and I said I hoped so too.' Upon which the attorney immediately interposed with this insidious question, 'What answer did your 'lordship give to it?' and the earl replied, 'I 'have told you what I know: My lord is too 'full of discourse for me to answer all he says.' Again, having closed what he had to say, the attorney besets him thus 'I would ask you my 'lord, upon your honour, would not any man 'have said as much, that had been in the plot?' To which the earl returned this Spartan answer, 'I cannot tell; I know of no plot.'" Ralph.

Sidney. Mr. Philip Howard.

Just. *Withins.* What do you ask him?

Sidney. What you heard my lord Howard say concerning this pretended plot, or my being in it?

Mr. *P. Howard.* My lord, when the plot first brake out, I used to meet my lord Howard very often at my brother's house, and coming one day from Whitehall, he asked me, what news? I told him, my lord, says I, there are abundance of people that have confessed the horrid design of murdering the king, and the duke. How, says he, is such a thing possible? Says I, 'tis so, they have all confessed it. Says he, do you know any of their names? Yes, says I, I have heard their names. What are their names, says he? Why, says I, col. Rumsey, and Mr. West, and one Walcot and others that are in the proclamation; (I can't tell whether Walcot was in hold) says he, 'tis impossible such a thing can be: says he, there are in all countries people that wish ill to the government, and says he, I believe there are some here; but says he, for any man of honour, interest or estate to go about it, is wholly impossible. Says I, my lord, so it is, and I believe it. Says I, my lord, do you know any of these people? No, says he, none of them, only one day, says he, passing through the Exchange, a man saluted me, with a blemish upon his eye, and he embraced me, and wished me all happiness: says he, I could not call to mind who this man was; but afterwards I recollected myself that I met him at my lord Shaftesbury's, and heard afterwards, and concluded his name to be ———, his at whose house the king was to be assassinated——

Att. Gen. Rumbold?

Mr. *Howard.* Ay, Rumbold. My lord, may I ask if my lord Howard be here?

L. C. J. He is there behind you.

Mr. *Howard.* Then he will hear me. My lord, says I, what does your lordship think of this business? Says he, I am in a maze: says I, if you will be ruled by me, you have a good opportunity to address to the king, and all the discontented lords, as they are called; and to shew your detestation and abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, You have put one of the best notions in my head that ever was put. Says I, you are a very good penman, draw up the first address (and I believe I was the first that mentioned an address, you have had many an one since, God send them good success.) Says he, I am sorry my lord of Essex is out of town, he should present it. But, says I, here is my lord Russell, my lord of Bedford, my lord of Clare, all of you that are disaffected, and so accounted, go about this business, and make the nation happy and king happy. Says he, Will you stay till I come back? Ay, says I, if you will come in any time; but he never came back while I was there. The next day, I think, my lord Russell was taken, and I came and found him at my brother's house again (for there he was day and night); says he, cousin, What news? Says I, my lord Russell is sent to the Tower. We are all undone then, says he. Pray, says he, go to my lord privy-seal, and see if you can find if I am to be taken up; says he, I doubt 'tis a sham-plot; if it was a true plot, I should fear nothing; says I, What do you put me to go to my lord privy-seal for? He is one of the king's cabinet council, do you think he will tell me? I won't go; but, says I, if you are not guilty, why would you have me to go to enquire? Why, says he, because I fear 'tis not a true plot, but a plot made upon us, and therefore, says he, there is no man free. My lord, I can say no more as to that time (and there is no man that sits here, that wishes the king better than I do). The next thing I come to is this, I came the third day, and he was mighty sad and melancholy, that was when col. Sidney was taken; says I, Why are you so melancholy, because col. Sidney is taken? Says I, col. Sidney was a man talked of before, why were you not troubled for my lord Russell, that is of your blood? Says he, I have that particular obligation from col. Sidney, that no one man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, would you have us undertake for all the people that hear you? I think you have spoken very materially, and I will observe it by and by to the jury.

Sidney. Pray call Dr. Burnet.

Just. *Walcot.* What do you ask Dr. Burnet?

Sidney. I have only to ask Dr. Burnet, whether after the news of this pretended plot, my lord Howard came to him, and what he said to him.

Dr. *Burnet.* My lord, the day after this plot brake out, my lord Howard came to see me, and upon some discourse of the plot, with hands and eyes lifted up to heaven, he protested he knew nothing of any plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing.

My lord *Paget* was sent for at the prisoner's request, being in the hall.

Col. *Sidney.* My lord, I desire Joseph Ducas may be called. [Who appeared, being a Frenchman.]

Sidney. I desire to know whether he was not in my house when my lord Howard came thither, a little after I was made a prisoner, and what he said upon it?

Ducas. Yes, my lord, my lord Howard came the day after colonel Sidney was taken, and he asked me, where was the colonel Sidney? And I said, he was taken by an order of the king, and he said, Oh Lord! What is that for? I said, They have taken papers; he said, are some papers left? Yes. Have they taken something more? No. Well, you must take all the things out of the house, and carry them to some you can trust: I dare trust no body, says he; I will lend my coach and

coachman, said I, if the colonel Sidney will save his goods; he save them, if not, it is no matter. A little after the lord Howard came in the house of col. Sidney about eleven o'clock at night, when he was in, I told them, What is this? They talk of a plot to kill the king and the duke, and I told him, they spake of one general insurrection; and I told him more, that I understood that col. Sidney was sent into Scotland: when my lord Howard understood that, he said God knows, I know nothing of this, and I am sure if the colonel Sidney was concerned in the matter, he would tell me something, but I know nothing. Well, my lord, I told him, I believe you are not safe in this house, there is more danger here than in another place. Says he, I have been a prisoner, and I had rather do any thing in the world than be a prisoner again.

Then my lord *Paget* came into the Court.

Col. *Sidney.* Pray, my lord, be pleased to tell the Court, if my lord Howard has said any thing to you concerning this late pretended Plot, or my being any party in it.

Lord *Paget.* My lord, I was subpœna'd to come hither, and did not know upon what account; I am obliged to say, my lord Howard was with me presently after the breaking out of this Plot, and before his appearing in that part which he now acts, he came to me and I told him, that I was glad to see him abroad, and that he was not concerned in this disorder. He said, he had joy from several concerning it, and he took it as an injury to him, for that it looked as if he were Guilty. He said, he knew nothing of himself, nor any body else. And though he was free in discourse, and free to go into any company indifferently; yet he said, he had not seen any body that could say any thing of him, or give him occasion to say any thing of any body else.

Sidney. Mr. Edward Howard.

Mr. *E. Howard.* Mr. Sidney, what have you to say to me?

Col. *Sidney.* My lord, I desire you would ask Mr. Ed. Howard the same thing, what discourse he had with my lord Howard about this Plot?

L. C. J. Mr. Howard, Mr. Sidney desires you to tell what discourse you had with my lord Howard about this Plot.

Mr. *E. Howard.* My lord, I have been for some time very intimate with my lord, not only upon the account of our alliance, but upon a strict intimacy and correspondence of friendship, and I think I was as much his as he could expect from that alliance. I did move him during this time, to serve the king upon the most honourable account I could, but that proved ineffectual: I pass that, and come to the business here. As soon as the Plot brake out, my lord having a great intimacy with me, expressed a great detestation and surprizing in himself to hear of it, wherein my lord Howard assured me under very great asseverations, that he could neither accuse himself, nor any man living. He told me moreover, that there were certain persons of quality, whom he was very much concerned for, that they should be so much reflected upon or troubled, and he condoled very much their condition, both before and after they were taken. My lord, I believe in my conscience he did this without any mental reservation, or equivocation, for he had no reason to do it with me. I add moreover, if I have any sense of my lord's disposition, I think if he had known any such thing, he would not have stood his being taken, or made his application to the king in this manner, I am afraid not so suitable to his quality.

L. C. J. No reflections upon any body.

Mr. *Howard.* My lord, I reflect upon no body. I understand where I am, and have a respect for the place; but since your lordship has given me this occasion, I must needs say, that that reproof that was accidentally given me at the trial of my lord Russell, by reason of a weak memory, made me omit some particulars I will speak now, which are these, and I think they are material: my lord, upon the discourse of this Plot, did further assure me, that it was certainly a sham, even to his knowledge: how, my lord, says I, do you mean a sham? Why, says he, such an one, cousin, as is too black for any minister of public employment to have devised; but, says he, it was forged by people in the dark, such as jesuits and papists; and, says he, this is my conscience. Says I, my lord, if you are sure of this thing, then pray, my lord, do that honourable thing that becomes your quality, that is, give the king satisfaction as becomes you; pray make an address under your hand to the king, whereby you express your detestation and abhorrence of this thing. Says he, I thank you for your counsel. to what minister, says he, shall I apply myself? I pitched upon my lord Hallifax, and I told him of my lord's desire, and I remember my lord Howard named the duke of Monmouth, my lord of Bedford, the earl of Clare, and he said he was sure they would do it; that he was sure of their innocence, and would be glad of the occasion: and I went to my lord Hallifax, and told him that my lord was willing to set it under his hand, his detestation of this Plot, and that there was no such thing to his knowledge. My lord Hallifax very worthily received me; says he, I will introduce it; but my lord Russel being taken, this was laid aside, and my lord gave this reason. For, says he, there will be so many people taken, they will be hunted. I must needs add from my conscience, and from my heart, before God and man, that if my lord had spoken before the king, sitting upon his throne, abating for the solemnity of the presence, I could not have more believed him, from that assurance he had in me. And I am sure from what I have said, if I had the honour to be of this gentleman's jury I would not believe him.

L. C. J. That must not be suffered.

Att. Gen. You ought to be bound to your good behaviour for that.

L. C. J. The jury are bound by their oaths to go according to their evidence, they are not to go by men's conjectures.

Mr. *Howard.* May I go, my lord?

Att. Gen. My lord Howard desires he may stay, we shall make use of him.

Sidney. My lord, I spake of a mortgage that I had of my lord Howard, I do not know whether it is needful to be proved; but it is so.

Lord *Howard.* I confess it.

Sidney. Then, my lord, here is the other point; he is under the fear, that he dare not but say what he thinks will conduce towards the gaining his pardon; and that he hath expressed, that he could not have his pardon, but he must first do this drudgery of swearing. I need not say, that his son should say, that he was sorry his father could not get his pardon unless he did swear against some others.

Sidney. Call Mr. Blake. [Who appeared.] My lord, I desire he may be asked, whether my lord Howard did not tell him that he could not get his pardon yet, and he could ascribe it to nothing, but that the drudgery of swearing must be over first.

Then my Lord Chief Justice asked the question.

Mr. *Blake.* My lord, I am very sorry I should be called to give a public account of a private conversation, how it comes about I do not know. My lord sent for me about six weeks ago, to come and see him. I went, and we talked of news; I told him, I heard no body had their pardon but he that first discovered the Plot; he told me, no; but he had his warrant for it: and, says he, I have their word and honour for it; but says he, I will do nothing in it till I have farther order; and says he, I hear nothing of it, and I can ascribe it to no other reason, but I must not have my pardon till the drudgery of swearing is over. These words my lord said, I believe my lord won't deny it.

Then col. Sidney called Mr. Hunt and Burroughs, but they did not appear.

Col. *Sidney.* It is a hard case they do not appear. One of them was to prove that my lord Howard said he could not have his pardon till he had done some other jobs.

L. C. J. I cannot help it; if you had come for assistance from the Court, I would willingly have done what I could.

Then col. Sidney mentioned the duke of Buckingham, but he was informed he was not subpœna'd.

Sidney. Call Grace Tracy and Elizabeth Penwick. [Who appeared.] I ask you only, what my lord Howard said to you at my house concerning the Plot, and my being in it?

Tracy. Sir, he said, that he knew nothing of a Plot he protested, and he was sure col. Sidney knew nothing of it. And he said, if you knew any thing of it, he must needs know of it, for he knew as much of your concerns as any one in the world.

Sidney. Did he take God to witness upon it?

Tracy. Yes.

Sidney. Did he desire my plate at my house?

Tracy. I cannot tell that, he said the goods might be sent to his house.

Sidney. Penwick, what did my lord Howard say in your hearing concerning the pretended Plot, or my plate carrying away?

Penwick. When he came, he asked for your honour, and they said your honour was taken away by a man to the Tower for the Plot, and then he took God to witness he knew nothing of it, and believed your honour did not neither. He said, he was in the Tower two years ago, and your honour, he believed, saved his life.

Sidney. Did he desire the plate?

Penwick. Yes, and said it should be sent to his house to be secured. He said it was only malice.

Mr. *Wharton* stood up,

Wharton. It is only this I have to say, That if your lordship pleases to shew me any of these sheets of paper, I will undertake to imitate them in a little time, that you shan't know which is which. It is the easiest hand that ever I saw in my life.

Att. Gen. You did not write these, Mr. Wharton?

Wharton. No; but I will do this in a very little time, if you please.

L. C. J. Have you any more witnesses?

Sidney. No, my lord.

L. C. J. Then apply yourself to the jury.

Col. *Sidney.* Then this is that I have to say. Here is a huge complication of crimes laid to my charge: I did not know at first under what statute they were, now I find it is the statute of 25 Edw. 3. This statute hath two branches; one relating to war, the other to the person of the king, that relating to the person of the king makes the conspiring, imagining and compassing his death, criminal. That concerning war is not, unless it be levied. Now, my lord, I cannot imagine to which of these they refer my crime, and I did desire your lordship to explain it. For to say that a man did meet to conspire the king's death, and he that gives you the account of the business does not speak one word of it, seems extravagant; for conspiracies have ever their denomination from that point to which they tend; as a conspiracy to make false coin infers instruments and the like. A conspiracy to take away a woman, to kill or rob, are all directed to that end. So conspiring to kill the king, must immediately aim at killing the king. The king hath two capacities, natural and politic, that which is the politic cannot be within the statute, in that sense he never dies, and it is absurd to say it should be a fault to kill the king than cannot die: so then it must be the natural sense it must be understood in, which must be done by sword, by pistol, or any other way.

Now if there be not one word of this, then that is utterly at an end, though the witness had been good. The next point is concerning levying of war. Levying of war is made treason there, so it be proved by overt-act: but an overt-act of that never was, or can be pretended here. If the war be not levied, it is not within the act, for conspiring to levy war is not in the act. My lord, there is no man thinks that I would kill the king that knows me, I am not a man to have such a design, perhaps I may say I have saved his life once. So that it must be by implication, that is, it is first imagined that I intended to raise a war, and then it is imagined that war should tend to the destruction of the king. Now I know that may follow, but that is not natural or necessary, and being not natural or necessary, it cannot be so understood by the law. That it is not, is plain; for many wars have been made, and the death of the king has not followed. David made war upon Saul, yet no body will say he sought his death, he had him under his power and did not kill him; David made war upon Ishbosheth, yet did not design his death: and so in England and France kings have been taken prisoners, but they did not kill them. King Stephen was taken prisoner, but they did not kill him. So that it is two distinct things to make war and to endeavour to kill the king. Now as there is no manner of pretence that I should endeavour to kill the king directly, so it cannot be by inference, because it is treason under another species: I confess I am not fit to argue these points, I think I ought to have counsel, but if you won't allow it me, I cannot help it; but these things are impossible to be jumbled up together. Now I say this, if I am not under the first branch, if not directly, I cannot be by implication; though I did make war, I cannot be said to conspire the death of the king, because it is a distinct species of treason; and my lord Coke says, it is the overthrow of all justice to confound 'Membra dividentia.' Now if the making of war cannot be understood to be a conspiring the death of the king, then I am not guilty of this indictment; but here my lord, is neither conspiring the death of the king, nor making war, nor conspiring to make war. Besides, I say, it is not the best man's evidence here would be good in this case, because the law requires two. The next thing is the business of Aaron Smith, which my lord tells so imperfectly, and so merely conjectural, that there is nothing in it but his rhetorick in setting it out. He tells you of a letter sent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no; so that I think we may lay that aside as the other, as things nothing in them at all. Then says Mr. Attorney, these Scotch gentlemen are come to town, I profess I never heard the names of one of them till he named them to me in the Tower. I have not sent myself, nor writ a letter into Scotland never since the year 59, nor do I know one man in Scotland to whom I can write, or from whom I ever received one. I returned into England in the year 77, and since that time have not writ nor received a letter from Scotland. Then some gentlemen came hither, what is that to me? I never saw one of the Campbells in my life, nor Monro; if any one can prove I have had any communication with them, I will be glad to suffer. Then here are papers, if any thing is to be made of them, you must produce the whole, for it is impossible to make any thing of a part of them. You ask me, what other passage I would have read, I do not know a passage in them, I cannot tell whether it be good or bad. But if there are papers found, it is a great doubt whether they were found in my study or no, or whether they be not counterfeit; but though that be admitted that they were found in my house, the hand is such, that it shews they have been writ very many years. Then that which seems to be an account of the sections and chapters, that is but a scrap, and what if any body had, my lord, either in my own hand or another's, found papers that are not well justifiable, is this treason? Does this imagine the death of the king? Does this reach the life of the king? If any man can say I ever printed a sheet in my life I will submit to any punishment. Many others, my lord, they write, and they write what comes into their heads. I believe there is a brother of mine here has forty quires of paper written by my father, and never one sheet of them was published; but he writ his own mind to see what he could think of it another time, and blot it out again, may be. And I myself, I believe, have burned more papers of my own writing than a horse can carry. So that for these papers I cannot answer for them, there is nothing in it, and what concatenation can this have with the other design that is in itself nothing, with my lord's select council selected by no body to pursue the design of my lord Shaftesbury? And this council that he pretends to be set up for so great a business, was to be adjusted with so much *finesse* so as to bring things together, what was this *finesse* to do? (taking it for granted, which I do not) This was nothing (if he was a credible witness) but a few men talking at large of what might be or not be, what was like to fall out without any manner of intention, or doing any thing; they did not so much as enquire, whether there were men in the country, arms or ammunition. A war to be made by five or six men, not knowing one another, not trusting one another. What said Dr. Coxe in his evidence at my lord Russell's trial, of my lord Russell's trusting my lord Howard? He might say the same of some others. So that, my lord, I say these papers have no manner of coherence, no dependence upon any such design. You must go upon conjecture upon conjecture; and after all, you find nothing but only papers, never perfect, only scraps, written many years ago, and that could not be calculated for the raising of the people. Now, pray what imagination can be more vain than that? And what man can be

safe, if the king's counsel may make such (whimsical I won't say, but) groundless constructions? Mr. Attorney says, the plot was broken to the Scots, (God knows we were neither broken nor joined) and that the Campbells came to town about that time I was taken; and in the mean time my lord Howard, the great contriver of all this plot, who was most active and advised the business that consisted of so much *finesse*, he goes there and agrees of nothing, and then goes into Essex upon great important business, greater than the war of England and Scotland, to what purpose? To look after a little pimping manor, and what then? Why then it must be laid aside, and he must be idle five weeks at the Bath, and there is no enquiring after it. Now, I desire your lordship to consider, whether there be a possibility for any men, that have the sense of porters and grooms, to do such things as he would put upon us. I would only say this; if Mr. Attorney be in the right, there was a combination with the Scots, and then this paper was writ; for those that say I did it, say I was doing of it then; and by the notes, there is work enough for four or five years, to make out what is mentioned in those scraps of paper, and this must be to kill the king. And I say this, my lord, that under favour, for all constructive treasons you are to make none, but to go according to plain proof, and that these constructive treasons belong only to parliament, and by the immediate proviso in that act. Now, my lord, I leave it to your lordship, to see whether there is in this any thing that you can say is an overt-act of treason mentioned in 25 Edw. 3. If it be not plainly under one of the two branches, that I have endeavoured to kill the king, or levied war, then it is matter of construction, and that belongs to no court but the parliament. Then my lord, this hath been adjudged already in Throgmorton's case. There are twenty judgments of parliament, the act of 13 Eliz. that says——I should have somebody to speak for me, my lord.

L. C. J. We are of another opinion.

Just. *Withins.* If you acknowledge the matter of fact, you say well.

Col. *Sidney.* I say there are several judgments of parliament, that do shew whatever is constructive treason does not belong to any private court. That of 1 Mary, 1 Ed 6, 1 Eliz. 5 Eliz. 18, another 13 Car. shews this. Now my lord, I say that the business concerning the papers, it is only a similitude of hands, which is just nothing. In my lady Carr's case, it was resolved to extend to no criminal cause; if not to any then not to the greatest, the most capital. So that I have only this to say, that I think it is impossible for the jury to find this matter; for the first point you proved by my lord Howard, that I think is nobody, and the last concerning the papers, is only imagination from the similitude of hands. If I had published it, I must have answered for it; or if the thing had been whole and mine, I must have answered for it; but for these scraps never shewed any body, that I think does not at all concern me. And I say, if the jury should find it (which is impossible they can) I desire to have the law reserved unto me.

Solicitor General. My lord, and you gentlemen of the jury, the evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The crime the prisoner stands accused for, is compassing and imagining the death of the king. That which we go about to prove, that compassing and imagining by, is by his meeting, and consulting how to raise arms against the king, and by plain matter in writing under his own hand where he does affirm, it is lawful to take away and destroy the king. Gentlemen, I will begin with the first part of it, the meeting and consultation to raise arms against the king. The prisoner, gentlemen, hath endeavoured to avoid the whole force of this evidence, by saying, that this in point of law can't affect him, if it were all proved; for this does not amount to a proof of his compassing and imagining the death of the king, and he is very long in interpreting the act of parliament to you of 25 Edw. 3, and dividing of it into several members or branches of treason; and does insist upon it, that though this should be an offence within one branch of that statute, yet that is not a proof of the other, which is the branch he is proceeding upon, that is the first clause against the compassing and imagining the death of the king. And, says he, conspiring to levy war is not so much as one branch of that statute, but it must be war actually levied. This is a matter he is wholly mistaken in, in point of law. It hath been adjudged over and over again, that an act which is in one branch of that statute, may be an overt-act to prove a man guilty of another branch of it. A levying war is an overt-act to prove a man guilty of conspiring the death of the king. And this was adjudged in the case of sir Henry Vane, so is meeting and consulting to raise arms; and reason does plainly speak it to be so; for they that conspire to raise war against the king, can't be presumed to stop any where, till they have dethroned or murdered the king. Gentlemen, I won't be long in citing authorities, it hath been settled lately by all the judges of England, in the case of my lord Russell, who hath suffered for this conspiracy. Therefore that point of law will be very plain against the prisoner. He hath mentioned some other things, as that there must be two witnesses to every particular fact, and one witness to one fact, and another to another, is not sufficient; it hath been very often objected, and as often over-ruled: it was over-ruled solemnly in the case of my lord Stafford. Therefore if we have one witness to one overt-act, and another to another, they will be two witnesses in law to convict this prisoner. In the first part of our evidence, we give you an account of the general design of an insurrection that was to have been, that this was contrived first, when my lord Shaftesbury was in England, that after my lord Shaftesbury was

gone, the business did not fall, but they thought fit to revive it again, and that they might carry it on the more steadily, they did contrive a council among themselves of six, whereof the prisoner at the bar was one. They were the duke of Monmouth, my lord of Essex, my lord Howard, my lord Russell, the prisoner at the bar, and Mr. Hambden. This council they contrived to manage this affair, and to carry on that design, that seemed to fall by the death of my lord of Shaftesbury, and they met; this we give you an account of, first by witnesses, that gave you an account in general of it. And though they were not privy to it yet they heard of this council, and that col. Sidney was to be one of this council. This, gentlemen, if it had stood alone by itself, had been nothing to affect the prisoner at all. But this will shew you, that it was discoursed among them that were in this conspiracy. Then my lord Howard gives you an account, that first the duke of Monmouth, and he and colonel Sidney met, and it was agreed to be necessary to have a council that should consist of six or seven, and they were to carry it on. That the duke of Monmouth undertook to dispose my lord Russell to it, and colonel Sidney to dispose the earl of Essex, and Mr. Hambden; that these gentlemen did meet accordingly, and the substance of their discourse was, taking notice how the design had fallen upon the death of my lord Shaftesbury, that it was fit to carry it on before men's inclinations were cool, for they found they were ready to it, and had great reason to believe it, because this being a business communicated to so many, yet for all that it was kept very secret, and no body had made any mention of it, which they looked upon as a certain argument that men were ready to engage in it. This encouraged them to go on in this conspiracy. Then when the six met at Mr. Hambden's house, they debated concerning the place of rising, and the time; the time they conceived must be suddenly, before men's minds were cool, for now they thought they were ready and very much disposed to it; and for place they had in debate, whether they should rise first in the town, or in the country, or both together. And for the persons, they thought it absolutely necessary for them to have the united councils of Scotland to join with them, and therefore they did refer this matter to be better considered of another time, and they met afterwards at my lord Russell's house in February, and there they had discourse to the same purpose. But there they began to consider with themselves, being they were to destroy this government, what they should set up in the room of it, to what purpose they engaged. For they did very wisely consider, if this be only to serve a turn, and to make one man great, this will be a great hinderance in their affair, therefore they thought it was necessary to engage upon a public account, and to resolve all into the authority of parliament, which surely they either thought to force the king to call, or otherwise that the people might call a parliament, if the king refused, and so they choose their own heads. But still they were upon this point, that it was necessary for their friends in Scotland to have their councils united with them, and in order to that, it was necessary to contrive some way to send a messenger into Scotland, to bring some men here to treat and consult about it, and colonel Sidney is the man that does engage to send this messenger, and he had a man very fit for his turn, that is Aaron Smith, whom he could confide in, and him he undertook to send into Scotland. This messenger was to fetch my lord Melvin, the two Campbells, and sir John Cockram; colonel Sidney as he engaged to do this, so afterwards he did shew to my lord Howard money, which he affirmed was for that business; he says it was of a sum about sixty guineas, and he believes he gave it him, for that colonel Sidney told him, Aaron Smith was gone into Scotland; that the pretence was not bare faced to invite them over, to consult of a rebellion, but to consult about the business of Carolina, being a plantation for the persecuted brethren, as they pretended in Scotland. Gentlemen, these Scotchmen that were thus sent for over, they came accordingly, that is, the two Campbells, and sir John Cockram, and the discourse with sir Andrew Foster was according to this cant that was agreed on beforehand, concerning a plantation in Carolina. This was that that was pretended for their coming hither; but the true errand was, the business of the insurrection intended, gentlemen, that they came upon such a design, is evident from the circumstances; they came about the time the business brake out, and in that time suspiciously changing their lodging, they were taken making their escape, and this at a time before it was probable to be known abroad that these men were named as part of the conspirators. These things do very much verify the evidence my lord Howard hath given, and there is nothing has been said, does at all invalidate it. The sending of Aaron Smith into Scotland, and his going, and the coming of these men, and their endeavouring to make their escape, are mighty concurrent evidences with the whole evidence my lord Howard has given. Now, what objections are made against this evidence? Truly none at all. Here are persons of great quality have given their testimony, and they do not impeach my lord Howard in the least; but some do extremely confirm the truth of my lord Howard. My lord Anglesey gives you an account of a discourse at my lord of Bedford's, that my lord Howard came in and that my lord Howard should there comfort my lord of Bedford, and enlarge in the commendations of his son, and say he was confident he knew nothing of the design, and he must be innocent. Gentlemen, this is the nature of the most part of the evidence. My lord of Clare his evidence is much the like, that is, his denying that he knew of any plot. Now here is my lord Howard under a guilt of high-treason: for he was one of those

conspirators not yet discovered, nor no evidence of any discourse leading to any thing that should give occasion to him to protest his innocency: and says he, I know nothing of the plot. You would have wondered if he should have been talking in all places his knowledge, and declaring himself: His denying of it under the guilt, when he was not accused, is nothing to his confession when he comes to be apprehended and taken for it. Here Mr. Philip Howard says, he had several discourses with him about this business, upon the breaking out of the plot, and that he advised him to make an address, and that this was a thing that would be very acceptable, and very much for their vindication; and my lord Howard (he says) thanked him for his very good advice, and said, he would follow it: And presently after, when my lord Russell was apprehended, Mr. Howard tells him the news, that my lord Russell was apprehended; this was sudden to him. And what says he? We are all undone. When my lord Russell that was one of this council, that was a secret council, and could not be traced but by some of themselves, when he is apprehended, then he falls out into this expression, we are all undone. This is an argument my lord Howard had guilt upon him. For, why were they all undone, that my lord Russell was apprehended, any more than upon the apprehending the rest? Yes, because my lord was one of the six, and now it was come to the knowing of that part of the conspiracy. It was traced to the council of six, which in all likelihood would break the neck of the design. Now though he put it off afterwards, saying, 'I believe it a sham plot,' yet this was but a trivial put-off. And then, when colonel Sidney is taken, the same witness Mr. Howard tells you, my lord was very sad and melancholy; for then he had greater reason to lie under an apprehension of being detected. Therefore, gentlemen, this will rather confirm the truth of the evidence, than any way impeach it. Then (for I would repeat it all, though I think it had no great weight in it) Dr. Burnet says, that after the plot, my lord Howard pretended he knew of no plot. This is no more than was testified by the other lords before; and all it imports, is, that my lord did not discover himself to Dr. Burnet. But I would fain know, if my lord had told Dr. Burnet, had it not argued that he had great confidence in him, that he thought him a man fit to be intrusted with such a secret? And unless the doctor desires to be thought such a man, himself must own it is no objection, that my lord Howard did not tell him. Ducas's testimony is no more neither, that he protested he was innocent, and believed colonel Sidney was innocent, and this was before my lord Howard discovered any thing of this plot. Then colonel Sidney objects, this is by malice, my lord Howard owes him money, and seeks to pay his debts by taking away his life; and in further prosecution of this malice, would have seized upon his goods. But the evidence does not receive such construction, for my lord Howard only offered colonel Sidney the civility of his house to protect his plate and goods. Now, gentlemen, there were two other witnesses, my lord Paget and Mr. Edward Howard; but they say no more than the rest of them, that he did protest his innocency; and Mr. Howard says, he advised him to make an address to the king. This, gentlemen, I repeat, not that it is material, but for no other reason, than because colonel Sidney had produced it; and so we are to think, he intended to make some use of it; but I cannot see any inference to be drawn from it. There is one witness more, and that is Mr. Blake, to the credit of my lord Howard, who comes here, and says, that when he discoursed about a pardon, my lord should say, that he had a warrant for his pardon, but that he had not yet passed it, and could not yet; and he apprehended the reason was, because the drudgery of swearing was not over. But this is but what my lord Howard had conjectured: First, it does not appear, that there is any promise of pardon at all to my lord Howard, on any terms imposed on him. In the next place, whatever expectation he has of a pardon, he cannot reasonably hope for it without making a clear discovery of all he knows: For to stifle the evidence he has given, is not a way to deserve a pardon of his prince. Therefore, gentlemen, whatever expressions were used, though he called it the drudgery of swearing, however unwilling he is to come to it, and though he gives it very many hard names, and might think it very harsh to come and own himself to be one of the conspirators, it might be irksome, and very irksome; yet none of them tell you, that my lord Howard should say, that what he had said was not true. Now he has come and given his evidence, and you have heard all these objections against it, and not one of them touch it in the least.

I come in the next place to the other part of the evidence, the papers found in colonel Sidney's house. And in the first place he objects, they cannot affect him; for, says he, there is no proof they were found in my house, no proof they were written by me; for comparison of hands, that is nothing; and if they were proved to be mine, it is nothing at all to the purpose; they are an answer to a polemical discourse wherewith he entertained himself privately in his study. Why, you have observed, I know, that sir Philip Lloyd in the first place swears, that by warrant from the secretary he searched his house, and he found the papers lying upon colonel Sidney's table in his study, when he came in there; and there is no ground nor colour for you to suspect otherwise than that they were there, and he found them there. For the surmise of the prisoner at the bar, that they might be laid there, it is so foreign and without ground, that by and by you will think there is nothing at all in it. In the next place, we prove col. Sidney's hand, and that by as much proof as the thing is capable of; such a

proof as in all cases hath been allowed; and that is, for men to come that know and are acquainted with the hand-writing, and swear they know his hand-writing, and they believe this to be his hand. You have heard from Mr. Sheppard, a man that used to transact business for him, pay money for him; and Mr. Cook and Mr. Cary, men of known credit in the city of London, that have had the like dealings with col. Sidney, and they swear this is his hand-writing, as they verily believe. So that, gentlemen, this proof to you of col. Sidney's hand-writing does verify sir Philip Lloyd, that these papers must be found there, if col. Sidney writ them; and then this being found that they were writ by him, the next thing will be, how far this will be an evidence to prove his compassing and imagining the death of the king. Compassing and imagining the death of the king is the act of the mind, and is treason whilst it remains secret in the heart, though no such treason can be punished, because there is no way to prove it; but when once there is an overt-act, that is, any thing that does manifest and declare such intention, then the law takes hold of it, and punishes it as high-treason.

Now after this evidence, I think no man will doubt, whether it was in the heart of the prisoner at the bar to destroy the king. But first he objects, that this is a part of a book, and unless you take the whole, nothing can be made of it: as it is in wresting of texts of scripture, says he, you may as well say, that David says, there is no God, because David hath said, The fool hath said in his heart, there is no God. But, Gentlemen, the application will not hold; for you see a long discourse hath been read to you, a continued thread of argument; it is not one proposition, but an whole series of argument: these are the positions, 'That the king 'derives all his power from the people; that it 'is originally in the people, and that the mea'sure of subjection must be adjudged by the 'parliament; and if the king does fall from 'doing his duty, he must expect the people will 'exact it.' And this he has laid down as no way prejudicial to him; for says he, the king may refuse the crown, if he does not like it upon these terms. But, says he, if he does accept it, he must expect the performance will be exacted, or revenge taken by those he hath betrayed. Then next, he sets up an objection, and then argues against it: ay, but shall the people be judge in their own cause? and thus he answers it, It must be so: for is not the king a judge in his own cause? how can any man else be tried, or convicted of any offence, if the king may not be judge in his own cause? for to adjudge by a man's self or by his deputy, is the same thing; and so a crime against the king cannot be punished. And then he takes notice of it as a very absurd position, 'That the king shall judge in his own cause, 'and not the people.' That would be to say, The servant entertained by the master shall judge the master, but the master shall not judge the servant. Gentlemen, after this sort of argument he comes to this settled position, 'We 'may therefore, says he, change or take away 'kings, (without breaking any yoke, or that is 'made a yoke;) the injury is therefore in imposing the yoke, and there can be none at all in breaking of it.' But he goes on in his book, and that is by way of answer to an objection, that if there be no injury, yet there may be inconvenience, if the headless multitude should shake off the yoke. But, says he, I would fain know how the multitude comes to be headless; and there he gives you many instances in story, and from foreign nations he comes home to the English, and tells you how all rebellions in later ages have been headed: and tells you the parliament is the head, or the nobility and gentry that compose it; and when the king fails in his duty, the people may call it. The multitude therefore is never headless, but they either find or create an head, so that here is a plain and avowed principle of rebellion established upon the strongest reason he has to back it. Gentlemen, this with the other evidence that has been given, will be sufficient to prove his compassing the death of the king. You see the affirmations he makes; when kings do break their trust they may be called to account by the people. This is the doctrine he broaches and argues for: he says in his book, in another part, that the calling and dissolving of parliaments is not in the king's power. Gentlemen, you all know how many parliaments the king hath called and dissolved; if it be not in his power, he hath done that that was not in his power, and so contrary to his trust. Gentlemen, at the entrance into this conspiracy, they were under an apprehension that their liberties were invaded, as you heard in the evidence from my lord Howard, that they were just making the insurrection upon that tumultuous opposition of electing of sheriffs in London. They enter into a consultation to raise arms against the king; and it is proved by my lord Howard, that the prisoner at the bar was one. Gentlemen, words spoken upon a supposition will be high-treason, as was held in king James's time, in the case of Collins in Roll's Reports, 'The king being excommunicate 'may be deposed and murdered,' without affirming he was excommunicated; and this was enough to convict him of high-treason. Now according to that case, to say the king having broken his trust may be deposed by his people, would be high treason; but here he does as good as affirm the king had broke his trust. When every one sees the king hath dissolved parliaments; this reduces it to an affirmation. And though this book be not brought to that council to be perused, and there debated, yet it will be another, and more than two witnesses against the prisoner: for I would ask any man, suppose a man was in a room, and there were two men, and he talks with both apart, and he comes to one, and endeavours to persuade him that it is lawful to rise in arms against the king, if so be he break his trust; and he should go to another man, and tell him the king hath broken

his trust, and we must seek some way to redress ourselves, and persuade the people to rise; these two witnesses do so tack this treason together, that they will be two witnesses to prove him guilty of high-treason. And you have heard one witness prove it positively to you, That he consulted to rise in arms against the king, and here is his own book says, it is lawful for a man to rise in arms against the king, if he break his trust, and in effect he hath said, the king hath broken his trust: therefore this will be a sufficient demonstration what the imagination of the heart of this man was, that it was nothing but the destruction of the king and the government, and indeed of all governments. There can be no such thing as government if the people shall be judge in the case: for what so uncertain as the heady and giddy multitude? Gentlemen, I think this will be a sufficient evidence of his consulting the death of the king. You have here the prisoner at the bar that is very deep in it. Indeed some men may by passion be transported into such an offence, and though the offence be never the less, whatever the motives are, yet in some it is less dangerous; for those that venture upon passion to raise commotions and rebellion, are not always so much upon their guard, but that they may make some false steps to entrap themselves. But this gentleman proceeds upon a surer foundation, it is his reason, it is his principle, it is the guide of all his actions, it is that by which he leads and directs the steady course of his life. A man convinced of these principles, and that walks accordingly, what won't he do to accomplish his designs? how wary will he be in all his actions? still reasoning with himself, which way to bring it most securely about. Gentlemen, This is the more dangerous conspiracy in this man, by how much the more it is rooted in him; and how deep it is, you hear, when a man shall write as his principle, that it is lawful for to depose kings, they breaking their trust, and that the revolt of the whole nation cannot be called rebellion. It will be a very sad case when people act this according to their consciences, and do all this for the good of the people, as they would have it thought; but this is the principle of this man. Gentlemen, we think we have plainly made it out to you, and proved it sufficiently, that it was the imagination of his heart to destroy the king, and made sufficient proof of high-treason.

Col. *Sidney.* Give me leave, my lord, to say a very few words. I desire Mr. Solicitor would not think it his duty to take away men's lives any how: first we have had a long story——

L. C. J. Nay, Mr. Sidney, we must not have vying and revying, I asked you before what you had to say; the course of evidence is, after the king's counsel have concluded, we never admit the prisoner to say any thing.

Sidney. My lord, it was a wise man said, There never could be too much delay in the life of a man: I know the king's counsel may conclude, if they please. Mr. Solicitor, I would not have him think that it is enough by one way or another to bring a man to death: my lord, this matter of sir Henry Vane is utterly misrepresented.——

L. C. J. I must tell you, gentlemen of the jury, that what the prisoner says, that is not proved, and what the king's counsel have said, of which there is no proof to make it out, must not be taken into any consideration.

Sidney. Then, my lord, here is a place or two in old Hale's [turning over my lord Hale's book] for the overt-act of one treason, not being an overt-act of another, your lordship knows Coke and Hale's were both against it. [He reads.] Compassing by bare words is not an overt-act, conspiring to levy war is no overt-act.

Sol. Gen. I desire but one word more for my own sake as well as the prisoner's, and that is, that if I have said any thing that is not law, or misrepeated, or misapplied the evidence which hath been given, I do make it my humble request to your lordship to rectify those mistakes, as well in point of fact as point of law; for God forbid the prisoner should suffer by any mistake.

L. C. J. Gentlemen, the evidence has been long, and it is a cause of great concernment, and it is far from the thoughts of the king, or from the thoughts, or desire of any of his judges here to be instrumental to take away the life of any man, that by law his life ought not to be taken away. For I had rather many guilty men should escape, than one innocent man suffer. The question is, whether upon all the evidence you have heard against the prisoner, and the evidence on his behalf, there is evidence sufficient to convict the prisoner of the high-treason he stands charged with. And as you must not be moved by the denial of the prisoner further than as it is backed with proof; so you are not to be inveigled by any insinuations made against the prisoner at the bar, further or otherwise than as the proof is made out to you. But it is usual, and it is a duty incumbent on the king's counsel, to urge against all such criminals, whatsoever they observe in the evidence against them, and likewise to endeavour to give answers to the objections that are made on their behalf. And, therefore, since we have been kept so long in this cause, it won't be amiss for me (and my brothers, as they shall think fit,) to help your memory in the fact, and discharge that duty that is incumbent upon the Court as to the points of law. This indictment is for high-treason, and is grounded upon the statute of 25 Edw. 3. By which statute, the compassing and imagining the death of the king, and declaring the same by an overt-act is made high-treason. The reason of that law was, because at common-law there was great doubt what was treason; wherefore to reduce that high crime to a certainty was that law made, that those that were guilty might know what to expect. And there are several acts of parliament made between the time of Edw. 3. and that of 1 M. but by that statute all treasons that are not enumerated by after-acts of par-

liament remain as they were declared by that statute of 25 Edw 3. And so are challenges and other matters, insisted upon by the prisoner, left as they were at the time of that act: I am also to tell you that in point of law, it is not only the opinion of us here, but the opinion of them that sat before us, and the opinion of all the judges of England, and within the memory of many of you, that though there be two witnesses required to prove a man guilty of high-treason, yet it is not necessary there should be two witnesses to the same thing at one time. But if two witnesses prove two several facts, that have a tendency to the same treason, they are two witnesses sufficient to convict any man of high-treason. In the case of my lord Stafford in parliament, all the judges assisting, it is notoriously known, that one witness to a conspiracy in England, and another to a conspiracy in France, were held two witnesses sufficient to convict him of high-treason. In the next place, I am to tell you, that though some judges have been of opinion that words of themselves were not an overt-act: but my lord Hale's, nor my lord Coke, nor any other of the sages of the law, ever questioned but that a letter would be an overt-act, sufficient to prove a man guilty of high-treason; for *scribere est agere.* Mr. Sidney says, the king is a politic person; but you must destroy him in his natural capacity, or it is not treason; but I must tell you, if any man compass to imprison the king, it is high-treason; so was the case of my lord Cobham. And my lord Coke, when he says, if a man do attempt to make the king do any thing by force and compulsion, otherwise than he ought to do, that it is high-treason within that act of 25 Edw. 3 But if it were an indictment only for the levying of war, there must be an actual war levied; but this is an indictment for compassing the death of the king; and the other treason, mentioned in that act of parliament for the levying war, may be given in evidence to prove the conspiracy of the king's death: for it is rightly told you by the king's counsel, that the imagination of a man's heart is not to be discerned; but if I declare such my imagination by an overt-act, which overt-act does naturally evince, that the king must be deposed, destroyed, imprisoned, or the like, it will be sufficient evidence of treason within that act. In the next place, having told you what the law is; for, gentlemen, it is our duty upon our oaths, to declare the law to you, and you are bound to receive our declaration of the law, and upon this declaration, to inquire whether there be a fact, sufficiently proved, to find the prisoner guilty of the high-treason of which he stands indicted: and for that I must tell you, whatever happens to be hear-say from others, it is not to be applied immediately to the prisoner; but however those matters that are remote at first may serve for this purpose, to prove there was generally a conspiracy to destroy the king and government: and for that matter, you all remember it was the constant rule and method observed about the Popish Plot, first to produce the evidence of the Plot in general: this was done in that famous case of my lord Stafford in parliament. Gentlemen, I am also to tell you, this alone does not at all affect the prisoner at the bar, but is made use of as a circumstance to support the credibility of the witnesses; and is thus far applicable to the business before you, that it is plain, by persons that don't touch the prisoner at the bar, (and I am sorry any man makes a doubt of it at this time of day) that there was a conspiracy to kill the king; for after so full a proof in this place, and in others, and the execution and confession of several of the offenders, I am surprized to observe that the prisoner at the bar, and some others present, seem not to believe it.

But, gentlemen, you hear the first witness; I speak of West: he tells you he had the honour to be acquainted with Mr. Sidney, and that he had discourse with Walcot, a person convicted and executed for this horrid conspiracy. Why, says he, he told me at my chamber, that they were not the only persons concerned, but that there were other persons of great quality that had their meetings for the carrying on the business in other places. And Ferguson, that was the ring-leader in this conspiracy, told him there was a design of a general insurrection; it was once laid down, but it is now taken up again. There are other counsellors of great importance; and he names among the rest, the prisoner at the bar. Mr. West goes a little further, and he tells you this: says he, he did not only tell me so, but that there was a design to conciliate a correspondence with some persons in Scotland, and they were to do it under the cant of having business in Carolina There is Mr. Keeling, he tells you too, there was a design for a general and public insurrection; that he was present with the Goodenoughs, one and the other, and that they had taken upon them to divide, and did divide the city into such and such districts: and what was the business? It was, that there might be a general insurrection; might be an insurrection, not only to destroy the king and the duke, but to destroy all the king's loyal subjects; and in taking away their lives, to take away the life of monarchy itself, and to subvert the religion established by law. Then comes in col. Rumsey, and he gives you an account that he had heard of such things in Mr. West's chamber; and tells you he had received such intelligence. And all these give you an account, that there was such a design to kill the king: and this is the substance of the general evidence produced to prove the conspiracy. Then to make this matter come home to the prisoner at the bar, first my lord Howard gives you an account, and does directly swear, that about the middle or latter end of January last, he happened to meet with colonel Sidney, the prisoner at the bar, and the duke of Monmouth (they were the persons first began to have discourse about this matter) and how they met

with a disappointment; the thing had slept a great while, and that it was fit it should be revived again; and that persons of quality were mentioned, who were to have an immediate care in the carrying on of the business, and that it should not be divulged to too many; accordingly there was my lord Russell, my lord of Essex, my lord of Salisbury, and Mr. Hambden named. He tells you, the prisoner at the bar undertook for my lord of Essex, and Mr. Hambden, and he tells you, the duke of Monmouth undertook for my lord Russell, and the rest; and that this was the result of one meeting: he goes yet further, that pursuant to this it was communicated to those persons so to be engaged, and the place and time was appointed; the place, Mr Hambden's house; but it is not so positive to the time, but only to the place and persons. He says, all these persons met, and he gives you an account, that Mr. Hambden (because it was necessary for some person to break silence) gave some short account of the design of their meeting, and made some reflexions upon the mischiefs that attended the government, and what apprehensions many people had upon the late choice of sheriffs, and that there had been a mal-administration of public justice; that it was fit some means should be used to redress these grievances. He can't tell you positively, what this man, or that man, said there; but says, that all did unanimously consent to what was then debated about an insurrection; and in order to it, they discoursed about the time when it should be, and that they thought fit it should be done suddenly, while men's minds were wound up to that height, as they then were; and as the first witness tells you, there was a consideration, whether it should be at one place, or at several places together: he says, then it was taken into consideration, that this could not be carried on, but there must be arms and ammunition provided. The next step is, about a necessary concern, the concern of money, and therefore our law calls money, the sinews of war. My lord Howard tells you, that the duke of Monmouth proposed 25 or 30,000*l*. That my lord Grey was to advance 10,000*l*. out of his own estate; but then they thought to make their party more strong by the assistance of a discontented people in Scotland, my lord of Argyle, and sir John Cockram, and several other people there to join with them. That pursuant to this, they all after met at my lord Russell's, and the same debate is re-assumed, and among the rest, this particular thing of conciliating a friendship with the Scotch; the Campbells, my lord of Argyle, and my lord Melvin were particularly mentioned. That colonel Sidney took upon himself to find out a messenger, but it was my lord Russell's part to write the letter; one of the messengers named to convey the same was Aaron Smith, he was known, says my lord Howard, to some of us; and then we all agreed, that Aaron Smith was the most proper man: Upon this they brake up that very time. Afterwards comes my lord Howard to col. Sidney at some distance of time, and he comes to him, and shews him threescore guineas, and told him he was going into the city, and that they were to be given to Aaron Smith. He tells you after this, that he had some other discourse about a fortnight or three weeks after, with col. Sidney; and that colonel Sidney did take notice, that he had sent him, and that he had an account of him, as far as Newcastle. So that it is very plain, that it was not sudden and rash thoughts, it is a little more than, according to the language we meet with in some pamphlets of late, more than heats and stirs. Gentlemen, then I must tell you, here are circumstances proved in pursuance of this design, for sir Andrew Foster informs you, how that sir John Cockram and the Campbells, and one Monro, as I take it, came to town, and that he had discourse with some of them about their business of coming out of Scotland; and he says, they pretended it was about some business of some trade to Carolina, which does still corroborate the evidence. He tells you likewise, that there being a noise of discovering the plot, they began to hide; sir John Cockram began to hide, and sculk from place to place; they come first with that cant in their mouths, about Carolina; the messenger Atterbury tells you, when they came to take these men, how they shufled from place to place. So, gentlemen, I must tell you, that if in case there be but one witness to prove a direct treason, and another witness to a circumstance that contributes to that treason, that will make two witnesses to prove the treason: Because I would explain my mind, not long ago all the judges of England were commanded to meet together, and one that is the senior of the king's counsel was pleased to put this case: If I buy a knife of J. S. to kill the king, and it be proved by one witness I bought a knife for this purpose, and another comes and proves, I bought such a knife of J. S. they are two witnesses sufficient to prove a man guilty of high treason; and so it was held by all the judges of England then present, in the presence of all the king's counsel. And therefore Mr. Sidney is mightily mistaken in the law: For in case of any treason (except the treason at the bar) or in treason for clipping and coining, one witness is sufficient at this day. Now, gentlemen, supposing all this should not be sufficient, here is a libel, and it is a most traiterous and seditious libel. If you believe, that that was colonel Sidney's book, writ by him, no man can doubt but it is a sufficient evidence, that he is guilty of compassing and imagining the death of the king; and let us consider, what proof can be greater, than what has been given of it. Mr. Sheppard, an intimate acquaintance of his, that has seen him write, he looks upon the hand, and says, he is extremely acquainted with the hand, and says he, I believe in my conscience, this book is col. Sidney's hand. Gentlemen, do you expect Mr. Sidney would call a witness to be by to see him write that book?

In the next place, you have two tradesmen, Coke and Cary, and they tell you, one had seen him write once, the other had seen his hand-writing, and they both believe it his hand-writing; and they have good reason, for they have paid several sums of money, upon notes which they took, as well as this, to be his hand-writing. Gentlemen, besides that, give me leave to tell you, here is another thing, that makes it more plain. This very book is found in col. Sidney's house, on the table in his study, where he used to write, by a gentleman, against whom colonel Sidney cannot make the least objection; and that there was that fairness offered by the gentleman, pray, colonel, put your seal upon it, that you may see, that no injury be done you; but Mr. Sidney would not do it. Therefore he seals them with his own seal, and carries them to Whitehall, where they were broken open, and swears that those papers were found in his closet, whereof this was one. Another thing which I must take notice of to you in this case, is to mind you, how this book contains all the malice, and revenge, and treason, that mankind can be guilty of: It fixes the sole power in the parliament and the people; so that he carries on the design still, for their debates at their meetings were to that purpose. And such doctrines as these suit with their debates; for there, a general insurrection was designed, and that was discoursed of in this book, and encouraged: They must not give it an ill name: It must not be called a rebellion, it being the general act of the people. The king, it says, is responsible to them, the king is but their trustee; that he had betrayed his trust, he had misgoverned, and now he is to give it up, that they may be all kings themse'ves. Gentlemen, I must tell you, I think I ought more than ordinarily to press this upon you, because I know the misfortune of the late unhappy rebellion, and the bringing the late blessed king to the scaffold was first begun by such kind of principles: They cried, he had betrayed the trust that was delegated to him from the people. Gentlemen, in the next place, because he is afraid their power alone won't do it, he endeavours to poison men's judgments; and the way he makes use of, he colours it with religion, and quotes scripture for it too: and you know how far that went in the late times; how we were for binding our king in chains, and our nobles in fetters of iron. Gentlemen, this is likewise made use of by him to stir up the people to rebellion. Gentlemen, if in case the prisoner did design the deposing the king, the removing the king, and in order thereunto he be guilty of conspiring to levy war; or as to the letter writ by my lord Russell, if he was privy to it, these will be evidences against him. So that it is not upon two, but it is upon greater evidence than 22, if you believe this book was writ by him. Next I must tell you, gentlemen, upon, I think a less testimony, an indictment was preferred against the late lord Russell, and he was thereupon convicted and executed; of which they have brought the record. These are the evidences for the king.

For the prisoner, he hath made several objections; as that there was no war levied: For, that, gentlemen, at the beginning of the cause I told you what I took the law to be, and I take it to be so very plainly. But, gentlemen, as to the credibility of my lord Howard, he offers you several circumstances. First, he offers you a noble lord, my lord Anglesey, who says, that he attended my lord of Bedford, upon the misfortune of the imprisonment of his son; after he had done, my lord Howard came to second that part of a christian's office, which he had performed, and told him, he had a very good son, and he knew no harm of him; and as to the plot, he knew nothing of it. Another noble lord, my lord Clare, tells you, that he had some discourse with my lord Howard and he said, that if he were accused, he thought they would but tell noses, and his business was done. Then Mr. Philip Howard, he tells you, how he was not so intimate with him as others, but he often came to his brother's; and that he should say, he knew nothing of a plot, nor did he believe any; but at the same time, he said he believed there were a sham plot; and then he pressed him about the business of the address; but that now my lord of Essex was out of town, and so it went off. Another thing Mr. Sidney took notice of, says he, it is an act of revenge in my lord Howard, for he owes him a debt, that he does (besides by his allegation) does not appear.

Sidney. My lord, he hath confessed it.

L. C. J. Admit it; yet in case colonel Sidney should be convicted of this treason, the debt accrues to the king, and he cannot be a farthing the better for it. But how does it look like revenge? I find my lord Howard, when he speaks of colonel Sidney, says, he was more beholden to him than any body, and was more sorry for him; so says my lord Clare. Gentlemen, you have it likewise offered, that he came to colonel Sidney's house, and there he was desirous to have the plate and goods removed to his house, and that he would assist them with his coach and coachman to carry them thither; and did affirm, that he knew nothing of the plot; and did not believe colonel Sidney knew any thing: and this is likewise proved by a couple of maid servants, as well as the Frenchman. You have likewise something to the same purpose said by my lord Paget, and this is offered to take off the credibility of my lord Howard. Do you believe, because my lord Howard did not tell them, I am in a conspiracy to kill the king, therefore he knew nothing of it? He knew these persons were men of honour and would not be concerned in any such thing. But do you think because a man goes about and denies his being in a plot, therefore he was not in it? Nay, it seems so far from being an evidence of his innocence, that it is an evidence of his guilt. What should provoke a man to discourse after this manner, if he had not apprehensions of guilt within himself?

This is the testimony offered against my lord Howard in disparagement of his evidence. Ay, but farther it is objected, he is in expectation of a pardon: and he did say, he thought he should not have the king's pardon: till such time as the drudgery of swearing was over. Why, gentlemen, I take notice, before this discourse happened, he swore the same thing at my lord Russell's trial. And I must tell you, though it is the duty of every man to discover all treasons; yet I tell you for a man to come and swear himself over and and over guilty, in the face of a court of justice, may seem irksome and provoke a man to give it such an epithet. It is therefore for his credit, that he is an unwilling witness: but, gentlemen, consider, if these things should have been allowed to take away the credibility of a witness, what would have become of the testimonies that have been given of late days? What would become of the evidence of all those that have been so profligate in their lives? Would you have the king's counsel to call none but men that were not concerned in this plot, to prove that they were plotting? Ay, but gentlemen, it is further objected, this hand looks like an old hand; and it may not be the prisoner's hand, but be counterfeited; and for that, there is a gentleman, who tells you what a dextrous man he is. He says, he believes he could counterfeit any hand in half an hour; it is an ugly temptation, but I hope he hath more honour than to make use of that art he so much glories in. But what time could there be for the counterfeiting of this book? Can you imagine that sir Philip Lloyd, through the bag sealed up, did it? Or who else, can you imagine, should, or, does the prisoner pretend, did write this book? So that as on one side, God forbid but we should be careful of men's lives, so on the other side, God forbid that flourishes and varnish should come to endanger the life of the king, and the destruction of the government. But, gentlemen, we are not to anticipate you in point of fact, I have, according to my memory, recapitulated the matters given in evidence. It remains purely in you now, whether you do believe upon the whole matter, that the prisoner is guilty of the high treason whereof he is indicted.

Just. *Withins*. Gentlemen, it is fit you should have our opinions; in all the points of law we concur with my lord chief justice: says colonel Sidney, here is a mighty conspiracy, but there is nothing comes of it, who must we thank for that? None but the Almighty Providence: one of themselves was troubled in conscience, and comes and discovers it; had not Keeling discovered it, God knows whether we might have been alive at this day.

Then the Jury withdrew, and in about half an hour's time returned, and brought the Prisoner in, Guilty.*

And then the Lieutenant of the Tower took away his prisoner.

Monday, Nov. 26, 1683, Algernon Sidney, esq. was brought up to the bar of the court of King's-Bench, to receive his Sentence.

L. C. J. Mr. Attorney, will you move any thing?

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* It appears that a prosecution was instituted against one Forth, a joiner, for words reflecting on the Jury who found this verdict. I have not seen any report of the trial of this Forth, but the Indictment against him is given (Tremaine 80) as follows:

REX *v.* FORTH.

Pasch. 36 Caroli Secundi.

Midd' ss.

Quod Termino Sancti Michaelis Anno Regn' Dom' Caroli Secundi nunc Regis Angl' &c. 35. in Cur' dicti Domini Regis nunc coram ipso Rege (eadem Cur' apud Westm' in Com' Midd' tunc tent' existen') quidam Algernon Sidney nup' de Paroch' Sancti Martini in Campis in Com' Midd' Ar' per quibusdam altis p'ditionibus person' dicti Dom' Regis nunc tangen' legitimo modo indictat' fuit posteaq; scilicet eodem termino Sancti Michaelis Anno suprad' apud Westm' pred' in dicto Com' Midd' in pred' Cur' dicti Dom' Regis nunc pred' Algernon Sidney per quandam Jur' patrie int' dictum Dominum Regem et prefat' Algernon Sidney capt' pro altis proditionib' pred' debito modo triat' fuit posteaq; convict' et attinct' exist' prout per record' Et p'cess' inde in eadem Cur' hic plenius apparet et quod Alexander Forth nup' de Paroch' Sancti Martini in Campis in Com' Midd' Junctor premiss' pred' satis sciens Ac existen' person' malor' nominis fame et conversation' et disposition' inquiete ac machinans practicans et nequissime intendens pacem dicti Domini Regis nunc et communem tranquillitatem hujus Regn' Angl' in quietare molestare et perturbare Ac triation' pred' cum veredict' superinde per eodem Domino Rege versus prefat' Algernon Sidney reddit' et debit' legis Cursum in ea parte ut prefertur habit' in maximum odium et contempt' et vilipendium cum omnibus ligeis subdit' dicti Domini Regis inducere et inferre Ac ad persuadend' et causand subdit' dicti Domini Regis credere quod triatio pred' indebite habit' fuit Et quod pred' Algernon Sidney immerito obiit ipse pred' Alexander Forth postea scilicet 29 die Novembris Anno Regn' dicti Domini Caroli Secundi nunc Regis Angl' et 35. sup'd' apud Westm' in Com' pred' ad nequissimas machination' et intentiones suas pred' perimplend' perficiend' et ad effectum redigend' cuidam G. Ctsby Gen' super quoddam Colloquium de et concernen' veredictum triacon' et Jur' pred' cum eodem G. C. habit' in presentia et auditu diversor' ligeor' subditor' dicti Domini Regis tunc et ibidem presen' falso illicite injuste nequit' et seditiose de Jur' pred' qui veredictum pred' versus pred' Algernon Sidney pro alta proditione pred' deder' dixit affirmavit et alta voce declaravit prout sequitur in hiis Anglicanis verbis sequen' videl', 'G---d damn all that is like your loggerheaded 'jury, that brought in a verdict' (veredictum pred' versus pred A. S. per alta p'ditione pred'

Att. Gen. My lord, the prisoner at the bar is convicted of high treason, I demand judgment against him.

Cl. of Cr. Algernon Sidney, hold up thy hand. [Which he did.] Thou hast been indicted of high treason, and thereupon arraigned, and thereunto pleaded not guilty, and for thy trial put thyself upon God and thy country, which country has found thee guilty, what can'st thou say for thyself, why judgment of death should not be given against thee, and execution awarded according to law?

Sidney. My lord, I humbly conceive, I have had no trial; I was to be tried by my country, I do not find my country in the jury that did try me, there were some of them that were not freeholders, I think, my lord, there is neither law nor precedent of any man that has been tried by a jury, upon an indictment laid in a county, that were not freeholders. So I do humbly conceive, that I have had no trial at all, and if I have had no trial, there can be no judgment.

L. C. J. Mr. Sidney, you had the opinion of the Court in that matter before: we were unanimous in it, for it was the opinion of all the judges of England, in the case* next preceding your's, though that was a case relating to Corporations, but they were of opinion, That by the statute of queen Mary, the trial of treason was put as it was at common law, and that there was no such challenge at common law.

Sidney. Under favour, my lord, I presume in such a case as this, of life, and for what I know concerns every man in England, you will give me a day and counsel to argue it.

L. C. J. It is not in the power of the Court to do it.

Sidney. My lord, I desire the indictment against me may be read.

L. C. J. To what purpose?

Sidney. I have somewhat to say to it.

L. C. J. Well, read the indictment.

Then the Clerk of the Crown read the Indictment.

Sidney. Pray Sir, will you give me leave to see it, if it please you.

L. C. J. No, that we cannot do.

Sidney. My lord, there is one thing then that makes this absolutely void, it deprives the king of his title, which is treason by law, 'Defensor Fidei.' There is no such thing there, if I heard right.

L. C. J. In that you would deprive the king of his life, that is in very full I think.

Sidney. If no body would deprive the king no more than I, he would be in no danger. Under favour these are things not to be over-ruled in point of life so easily.

L. C. J. Mr. Sidney, We very well understand our duty, we don't need to be told by you what our duty is, we tell you nothing but what is law; and if you make objections that are immaterial, we must over-rule them. Do not think that we over-rule in your case, that we would not over-rule in all men's cases in your condition The treason is sufficiently laid.

Sidney. My lord, I conceive this too, that those words, that are said to be written in the Paper, that there is nothing of treason in them; besides, that there was nothing at all proved of them, only by similitude of hands, which upon the case I alledge to your lordship was not to be admitted in a criminal case. Now it is easy to call a thing *Proditorie;* but yet let the nature of the things be examined, I put myself upon it, that there is no treason in it.

L. C. J. There is not a line in the book scarce but what is treason.

Just. *Withins.* I believe you don't believe it treason.

L. C. J. That is the worst part of your case; when men are riveted in opinion, that kings may be deposed, that they are accountable to their people, that a general insurrection is no rebellion, and justify it, it is high time, upon my word, to call them to account.

Sidney. My lord, the other day I had a book, wherein I had king James's Speech, upon which all that is there is grounded in his own speech to the parliament in 1603,* and there is nothing in these papers, which is called a Book, though it never appeared, for if it were true, it was only papers found in a private man's study, never shewed to any body; and Mr. Attorney takes this to bring it to a crime, in order to some other counsel, and this was to

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ut prefertur innuendo) 'which they had no evidence for' Et pred' Attorn' dict' Dom' Regis nunc general' per eodem Domino Rege dat' Cur' hic intelligi et informari quod pred' Alexander Forth postea scilicet primo die Decembris Anno Regn' dicti Dom' Regis nunc 35. suprad' apud Westm' pred' in pred' Com' Midd' ex ulteriori malitia sua et ad nequissimas machination' et intention' suas pred' p'implend' p'ficiend' et ad effectum redigend' sup' quodam al' Colloquio de et concern' veredict' pred' reddit' versus p'fat' Algernon Sidney per alta p'ditione pred' Et de et concernen' Jur' pred' cum p'dicto Georgio Clisby adtunc et ibid habit' in presentia et auditu diversor' ligeor' subdit' dicti Dom' Regis adtunc et ibidem presen' falso illicite injuste nequit' et seditiose de jur' pred' qui veredictum pred' versus prefat' Algernon Sidney pro alta proditione pred' deder' dixit retulit affirmavit et alta voce declaravit quod jurat, qui deder' veredictum suum pred' quod pred' Algernon Sidney fuit Culpabilis de pred' alta proditione versus dictum Dominum Regem nunc fuer' stupefact' Anglice 'a Loggerheaded Jury' et dederunt veredictum suum pred' pro quo null' habuer' Evidenc' in Contempt' dicti Domini Regis nunc legumq; suar' in malum et pernitiosum exemplum omn' al' in tali Casu de delinquen' Ac contra pacem dicti Dom' Regis nunc Coron' et dignitat' suas, &c. Unde idem Attorn," &c.

* Lord Russell's Case, see p. 585, et seq.

* See 1 Cobbett's Parl. Hist. 977.

come out such a time, when the insurrection brake out. My lord, there is one person I did not know where to find then, but every body knows where to find now, that is the duke of Monmouth, if there had been any thing in consultation, by this means to bring any thing about, he must have known of it, for it must be taken to be in prosecution of those designs of his: and if he will say there ever was any such thing, or knew any thing of it, I will acknowledge whatever you please.

L. C. J. That is over; you were tried for this fact: we must not send for the duke of Monmouth.

Sidney. I humbly think I ought, and desire to be heard upon it.

L. C. J. Upon what?

Sidney. If you will call it a trial——

L. C. J. I do. The law calls it so.

Just. *Withins.* We must not hear such discourses, after you have been tried here, and the jury have given their verdict; as if you had not justice done you.

Just. *Holloway.* I think it was a very fair trial.

Sidney. My lord, I desire that you would hear my reasons; why I should be brought to a new trial.

L. C. J. That can't be.

Sidney. Be the trial what it will?

Cl. of Cr. Crier, make an O yes.

Sidney. Can't I be heard, my lord?

L. C. J. Yes, If you will speak that which is proper; it is a strange thing, you seem to appeal as if you had some great hardship upon you. I am sure, I can as well appeal as you. I am sure you had all the favour shewed you, that ever any prisoner had. The Court heard you with patience, when you spake what was proper; but if you begin to arraign the justice of the nation, it concerns the justice of the nation to prevent you: we are bound by our consciences and our oaths to see right done to you; and though we are judges upon earth, we are accountable to the Judge of Heaven and earth; and we act according to our consciences, though we don't act according to your opinion.

Sidney. My lord, I say, in the first place I was brought to Westminster by Habeas Corpus, the 7th of this month, granted the day before I was to be arraigned, when yet no bill was exhibited against me; and my prosecutors could not know it would be found, unless they had a correspondence with the grand jury, which under favour ought not to have been had.

L. C. J. We know nothing of it: you had as good tell us of some body's ghost, as you did at the trial.

Sidney. I told you of two infamous persons that had acted my lord Russell's ghost.

L. C. J. Go on, if you have any thing else.

Sidney. I prayed a copy of the indictment, making my objections against it, and putting in a special plea, which the law, I humbly conceive, allowed me: the help of counsel to frame it was denied.

L. C. J. For the copy of the indictment, it was denied in the case you cited. This favour shewed you to-day was denied at any time to sir Henry Vane, that is, to have the indictment read in Latin. Don't say on the other side, we refused your plea. I told you, have a care of putting it in. If the plea was such as Mr. Attorney did demur to it: I told you, you were answerable for the consequences of it.

Just. *Withins.* We told you, you might put it in, but you must put it in at your peril.

Sidney. My lord, I would have put it in.

L. C. J. I did advertise you: if you put in a plea, upon your peril be it. I told you, we are bound by law to give you that fair advertisement of the great danger you would fall under, if it were not a good plea.

Sidney. My lord, my plea was that could never hurt me.

L. C. J. We do not know that.

Sidney. I desire, my lord, this, that it may be considered, that, being brought here to my trial, I did desire a copy of my indictment, upon the statute of 46 Edw. 3, which does allow it to all men in all cases.

L. C. J. I tell you the law is otherwise, and told you so then, and tell you so now.

Sidney. Your lordship did not tell me, that was not a law.

L. C. J. Unless there be a law particular for col. Sidney. If you have any more to say

Sidney. I am probably informed, and if your lordship will give me time, shall be able to prove it, that the jury was not summoned, as it ought to be; my lord, if this jury was not summoned by the bailiff, according to the ordinary way, but they were agreed upon by the under-sheriffs, Graham and Burton, I desire to know whether that be a good jury.

L. C. J. We can take notice of nothing, but what is upon the record: here is a return by the sheriff; if there had been any indirect means used with the sheriff, or any else, you should have mentioned it before they were sworn.

Sidney. Is there any thing in the world more irregular than that?

L. C. J. I knew nothing of it. That time is past.

Sidney. Now, my lord, all men are admitted on the jury.

L. C. J. Why, You did not like gentlemen, and now you don't like those that you had. In plain English, if any jury had found you guilty it had been the same thing. It had been a good summons, if they had acquitted you.

Sidney. When the jury thus composed, was sworn, four witnesses, of whom three were under the terror of death for treasons, were produced against me. And they confessed themselves guilty of crimes of which I had no knowledge, and told stories by hear-say. And your lordship did promise, in summing up the evidence, that the jury should be informed what did reach me, and what not, and I do not remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as possibly I could be.

Sidney. My lord Howard being the only witness, that said any thing against me, papers, which were said to be found in my house, were produced as another witness, and no other testimony given concerning them, but that the hand was like unto mine. No man can say, I read them, or shewed them to any man. None knew when they were written; the ink shewed they had been done many, and perhaps 20 or 30 years. Yea, some passages were read out of them, without examining what went before and after; when I desired the whole might be read, it was refused, unless I specified the passage, which I could not do, knowing not one word in them. When I alledged, that in criminal cases similitude of hands could not be taken for evidence, proposed my points of law concerning constructive treason, &c. And I did conceive that no Court under the parliament could be judges of it, and did desire the statute which did so enact it, might be read, it could not be obtained: and I cited many judgments in parliament.

L. C. J. Mr. Sidney, If you arraign the justice of the nation so, as though we had denied you the methods of justice, I must tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you less, I think we had done more our duty. What points of law do you mean?

Sidney. That of constructive treason, my lord.

L. C. J. We do not go upon constructive treason, it is plain treason within 25 Edw. 3.

Sidney. Is writing an act?

L. C. J. Yes, it is *agere*.

Proclamation made for silence.

Mr. *Bamfield.** Sir, I pray you to hear me one word as Amicus Curiæ, I humbly suppose that your lordship will not give judgment if there be a material defect in the indictment, as the clerk did read it, he left out Defensor Fidei, which is part of the stile of his majesty.

L. C. J. We have heard of it already, we thank you for your friendship, and are satisfied. Mr. Sidney, there remains nothing for the Court, but to discharge their duty in pronouncing that judgment the law requires to be pronounced against all persons convicted of high treason; and I must tell you, that though you seem to arraign the justice of the Court, and the proceeding——

Sidney. I must appeal to God and the world, I am not heard.

L. C. J. Appeal to whom you will. I could wish with all my heart, instead of appealing to the world, as though you had received something extreme hard in your case, that you would appeal to the Great God of Heaven, and consider the guilt you have contracted by the great offence you have committed. I wish with all my heart, you would consider your condition, but if your own ingenuity will not provoke you, nothing I can say will prevail with you to do it; if the king's general pardon, in which you had so great a share of the king's mercy, will not, I could wish, that, as a gentleman and as a Christian, you would consider under what particular obligations you lie to that gracious king, that hath done so much for you. I should have thought it would have wrought in you such a temper of mind, as to have turned the rest of your life into a generous acknowledgment of his bounty and mercy, and not into a state of constant combining and writing, not only to destroy him, but to subvert the government; and I am sorry to see you so earnest in the justification of the book, in which there is scarce a line, but what contains the rankest treason, such as deposing the king: it not only encourages, but justifies all rebellion. Mr. Sidney, you are a gentleman of quality, and need no counsel from me: if I could give you any, my charity to your immortal soul would provoke me to it. I pray God season this affliction to you. There remains nothing with the Court, but to pronounce that judgment that is expected, and the law requires, and therefore the judgment of the Court is,

'That you be carried hence to the place 'from whence you came, and from thence 'you shall be drawn upon an hurdle to the 'place of execution, where you shall be hanged 'by the neck, and, being alive, cut down, your 'privy-members shall be cut off, and burned 'before your face, your head severed from 'your body, and your body divided into four 'quarters, and they to be disposed at the plea'sure of the king. And the God of infinite 'mercy have mercy upon your soul.'*

Sidney. Then, O God! O God! I beseech thee to sanctify these sufferings unto me, and impute not my blood to the country, nor the city, through which I am to be drawn; let no inquisition be made for it, but if any, and the shedding of blood that is innocent, must be revenged, let the weight of it fall only upon those, that maliciously persecute me for righteousness sake.

L. C. J. I pray God work in you a temper fit to go unto the other world, for I see you are not fit for this.

Sidney. My lord, feel my pulse, [holding

* He had been one of the counsel assigned to advise with Sidney, as appears by sir W. Williams's MS.

* The whole of this sentence was remitted but beheading, upon account of his family. After his condemnation he is said to have "despised the way of petitioning his majesty about the disposal of his body." See 3 Kenn. Compl. Hist. 401. Roger North gladly relates, what he calls in his margin, "an indecent passage," the gross and coarse terms in which Sidney was reported to have expressed his manly indifference as to what might befal his body after death. See North's Examen, p. 411. 4to Ed. 1740.

out [his hand] and see if I am disordered; I bless God, I never was in better temper than I am now.

Then the Lieutenant of the Tower carried back his prisoner.*

The prisoner afterwards presented the following Petition to the king:

To the KING'S most Excellent MAJESTY, The Humble PETITION* of ALGERNON SIDNEY, esq.

Sheweth; That your petitioner, after a long and close imprisonment, was, on the 7th day of this month (November) brought by a guard of soldiers to the Palace-yard, upon an Habeas Corpus, directed to the lieutenant of the Tower before any indictment had been exhibited against him.

That whilst he was there detained, a bill was exhibited and found against him; whereupon he was immediately carried to the King's bench and there arraigned. In this surprize he desired a copy of the indictment, and leave to make his exceptions, or to put in a special plea, and counsel to frame it; but all was denied: he then offered a special plea ready engrossed; which was then also rejected, without reading: being threatened, That if he did not immediately plead Guilty or Not Guilty, judgment of high treason should be entered; he was forced, contrary to law (as he supposeth), to come to a general issue, in pleading Not Guilty.

November the 21st he was brought to his trial; and the indictment being perplexed and confused, so that neither he nor any of his friends that heard it could fully comprehend the scope of it, he was utterly unprovided of all the helps that the law alloweth unto every man for his defence: whereupon he again desired a copy, and produced an authentic copy of the statute Edw. 3, whereby it is enacted, That every man shall have a copy of any record that toucheth him in any manner, as well that which is for, as against the king, or any other person; but could have neither a copy of his indictment, nor that the statute should be read.

The jury by which he was to be tried was not (as he is informed) summoned by the bailiffs of the several hundreds, in the usual and legal manner; but names were agreed upon by Mr. Graham, Mr. Burton, and the under sheriff, and directions given to the bailiffs to summon them; and being all so chosen, the copy of the pannel was of no use to him.

When they came to be called, he excepted against some for being your majesty's servants which he did hope should not have been returned, when he was prosecuted at your majesty's suit.

Many others for not being freeholders (which

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* The Sheriff's receipt for the body of Sidney, as printed in the Memoirs of the Life of A. Sidney, Mr. Brand Hollis's edition, is as follows:

"This indenture made the seventh day of December, in the five and thirtieth year of the reign of our sovereign lord Charles the 2nd by the grace of God king of England, Scotland France and Ireland, defender of the faith, etc. and in the year of our Lord 1683. between the honourable Thomas Cheeke, esq. lieutenant of his majesty's Tower of London of the one part, and Peter Daniel, esq. and Samuel Dashwood, esq. sheriffs of the county of Middlesex of the other part: Whereas Algernon Sidney, esq. by warrant of the right honourable sir Leolin Jenkins, knight, his majesty's principal secretary of state, bearing date at Whitehall the five and twentieth day of June, in the five and thirtieth year of the reign of king Charles the second aforesaid, was committed to the custody of the said lieutenant of the Tower for high treason in compassing the death of the king, and conspiring to levy war against him, by him the said lieutenant to be safely kept up until he should be delivered by due course of law; and whereas, by writ issuing out of his majesty's court of king's bench, under the seal of the said court, bearing date the eight and twentieth day of November last past, reciting the judgment of the said court against the said Algernon Sidney for divers high treasons touching his majesty's person, whereof he then stood convicted and attainted, the said lieutenant of the Tower was commanded, that upon Friday the seventh day of December then next coming he the said lieutenant should meet the Sheriffs of Middlesex at Tower-hill, and there cause the said Algernon Sidney to be delivered to the said Sheriffs, to the intent that the said Sheriffs might cause execution to be made of him the said Algernon Sidney, in such manner as in the said writ is recited. Now this indenture witnesseth, that the said Thomas Cheeke, in obedience to the said writ, and in performance of his majesty's command therein specified, doth, the day of the date of these present indentures, deliver unto the said Peter Daniel and Samuel Dashwood, the body of the said Algernon Sidney, in the said writ mentioned, according to the form and effect of the said writ, and the said Peter Daniel and Samuel Dashwood do hereby acknowledge to have received on the day of the date of this present indenture, of and from the said Thomas Cheeke, the body of the said Algernon Sidney, and of him do acquit and discharge the said Thomas Cheeke by these presents; in witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

PETER DANIEL.—SAMUEL DASHWOOD.

Sealed and delivered in the presence of RICH. BRADBORNE, OB. REYNOLDS."

* In the State Paper office there is another Petition from Sidney to the King, but I could not obtain permission to copy it in time for insertion here.

exceptions he thinks are good in law), and others more lewd and infamous persons, not fit to be of any jury; but all was over-ruled by the lord chief-justice, and your petitioner forced to challenge them peremptorily, whom he found to be picked out as most suitable to the intentions of those who sought his ruin; whereby he lost the benefit allowed him by the law, of making his exceptions, and was forced to admit of mechanic persons, utterly unable to judge of such a matter as was to be brought before them.

This jury being sworn, no witness was produced who fixed any thing beyond hearsay upon your petitioner, except the lord Howard, and those that swore to some papers said to be found in his house, and offered as a second witness, and which were written in a hand like unto your Petitioner's.

Your petitioner produced ten witnesses, most of them men of eminent quality, the others of unblemished fame, to shew the lord Howard's testimony was inconsistent with what he had (in the presence of God) affirmed to many of them, (and as he swore at the trial of the lord Russell) under the same religious obligation of an oath as if it had been legally administered.

Your petitioner did endeavour further to shew that besides the absurdity and incongruity of his testimony, he being guilty of many crimes which he did not pretend your petitioner had any knowledge of; and having no other hope of a pardon, but by the drudgery of swearing against him, he deserved not to be believed: and that similitude of hands could not be evidence, was delivered by the lord chief-justice Keeling, and the whole court, in the lady Carr's case; so as no evidence at law remained against him.

That whosoever wrote those papers, they were but a small part of a polemical discourse in answer to a book written about thirty years ago, upon general propositions, applied to no time, nor any particular case; that it was impossible to judge of any part of it, unless the whole did appear, which did not; that the sense of such parts of it as were produced could not be comprehended, unless the whole had been read, which was denied; that the ink and paper shewed it to be written many years ago, and the lord Howard knowing nothing of them, they could have no concurrence with what your petitioner was said to have designed with him and others.

That the confusions and errors in writing it, shew the same had never been so much as reviewed, and being written in a hand that no man could well read, neither fit for the press, nor could be in some years, though the writer of it did intend it, which did not appear.

That they being only the present crude and private thoughts of a man, for the exercise of his own understanding in his study, never shewed to any, nor applied to any particular case, could not fall under the statute 25 Edw. 3, which takes cognizance of no such matters, and could not by construction be brought under it, such matters being thereby reserved to the parliament, as is declared in the proviso, which he desired might be read but was refused.

Eight or nine important points of law did hereupon arise; upon which your petitioner knowing his weakness, did desire his counsel might be heard or reserved to be found specially; but all was over-ruled by the violence of the lord chief justice, and your petitioner so frequently interrupted, that the whole method of his defence was broken, and he not suffered to say the tenth part of what he could have alledged in his own defence; so the jury was hurried into a verdict which they did not understand.

Now forasmuch as no man that is oppressed in England can have any relief, unless it be from your majesty:

Your Petitioner humbly prays, That, the premisses considered, your majesty would be pleased to admit him into your presence; and if he doth not shew that it is for your majesty's honour and interest to preserve him from the said oppression, he will not complain, though he be left to be destroyed.

The EXECUTION of ALGERNON SIDNEY, esq.* on Friday, December 7, 1683.

On the 7th of December (his majesty having been pleased to remit all the sentence but

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* Algernoon or Algernon Sidney or Sydney, was son to Robert the second (Sidney) earl of Leicester, and brother to Philip the third earl of Leicester, and to Henry Sidney, who was by king William created earl of Romney. He has an article sufficiently copious in the Biographia Britannica. Sir John Dalrymple has published in one of the "Appendixes" to his "Memoirs" Dispatches of Barillon (the French king's ambassador to Charles the Second) which contain accounts of a concert between the court of France and Sidney, Russell, and other eminent Englishmen, who are desirous to prevent the acquisition by king Charles the Second of arbitrary power. And I have no doubt there was such a concert. It is, indeed, to be regretted, as Mr. Laing has said (see vol. 6, p. 297) that the State Papers of the Stuarts were reserved for Macpherson and Dalrymple; but notwithstanding the many instances of falsification in detail which occur in Sir John's work, several of which have been exhibited in Notes to different Cases in this Collection, it is scarcely to be believed that he should have forged all the articles which he has inserted as dispatches from Barillon. Moreover, much credibility is given to the genuineness of these articles by the lately published "Œuvres de Louis XIV." I have already had more than one occasion to notice and to quote this publication, and I will here extract from it a passage in which Louis the XIVth speaks of transactions which occurred

beheading, he was brought to a scaffold erected for that purpose on Tower-hill, where, having delivered the following Paper to the Sheriff, his head was severed from his body.

The PAPER *which he delivered to the Sheriff.*

"Men, Brethren, and Fathers; Friends, Countrymen, and Strangers. It may be expected that I should now say some great matters unto you; but the rigour of the season, and the infirmities of my age, increased by a close imprisonment of above five months, do not permit me.

"Moreover, we live in an age that maketh truth pass for treason: I dare not say any thing contrary unto it, and the ears of those that are

before Sidney was permitted to return to England:

"Mais tandis que cette aventure [the retreat (as he represents it) of De Ruyter and Van Tromp in 1666 from Monk and Prince Rupert] sembloit nous oter le moyen de nous joindre pour les attaquer ouvertement, je cherchois de ma part des moyens secrets pour les affoiblir: d'une part, je ménageois les restes de la faction de Cromwel, pour exciter par leur crédit quelque nouveau trouble dans Londres; et d'autre coté, j' entretenois des intelligences avec les catholiques Irlandais, lesquels, étant toujours fort mécontens de leur condition, sembloient aussi toujours prêts à faire un effort pour la rendre plus supportable. Sur ces différentes pensées, j' écoutai les propositions qui me furent faites par Sidney, gentilhomme Anglais, lequel me promettoit de faire éclater dans peu quelque soulèvement, en lui faisant fournir cent mille écus; mais je trouvai la somme un peu trop forte, pour l' exposer ainsi sur la foi d'un fugitif, à moins de voir quelque disposition aux choses qu'il me faisoit attendre; c'est pourquoi je lui offris de donner seulement vingt mille écus comptant, avec promesse d'envoyer après aux soulevés tout le secours qui leur seroit nécessaire, aussitôt qu'ils paroîtroient en état de s'en pouvoir servir avec succès." Vol. 2, p. 203.

The dispatches of Barillon, according to the representations of Dalrymple, contain accounts of monies disbursed by Barillon to Sidney, and other considerable persons in England. But it is to be observed in respect of lord Russell, that it has not been pretended that he received a farthing of any money which may have been so disbursed.

Hume's reflections on the alleged connections between the court of France and persons in England, who wished to obstruct the acquisition by king Charles of arbitrary power, and in particular on the conduct of Russell, are worth insertion:

"We are to remark," says he (History, vol. 8, p. 43, Note, ed. of 1791), "that the party views of these men, and their well founded jealousies of the king and duke, engaged them, independently of the money, into the same measures that were suggested to them by the French ambassador. The intrigues of France, therefore with the parliament, were a mighty small engine in the political machine. Those with the king, which have always been known, were of infinitely greater consequence. The sums distributed to all these men, excepting Montague, did not exceed 16,000*l.* in three years; and therefore could have little weight in the two Houses, especially when opposed to the influence of the crown. According we find in all Barillon's dispatches, a great anxiety that the parliament should never be assembled. The conduct of these English patriots was more mean than criminal; and M. Courten says, that 200,000 livres employed by the Spaniards and Germans, would have more influence than two millions distributed by France. See sir J. Dalrymple's App. p. 111. It is amusing to observe the general, and I may say national, rage excited by the late discovery of this secret negociation; chiefly on account of Algernon Sydney, whom the blind prejudices of party had exalted into a hero. His ingratitude and breach of faith, in applying for the king's pardon, and immediately on his return entering into cabals for rebellion, form a conduct more criminal than the taking of French gold: yet the former circumstance was always known, and always disregarded. But every thing connected with France is supposed, in England, to be polluted beyond all possibility of expiation. Even lord Russell, whose conduct in this negociation was only factious, and that in an ordinary degree, is imagined to be dishonoured by the same discovery."

It should be borne in mind that the wishes and the conduct of the excellent lord Russell, which Hume has thus characterised as being "party views," and "only factious, and that in ordinary degree," were no other than a desire and endeavour to prevent a king, who, to say the least of him, had proved that he was no friend either to the religion or to the liberties of his subjects, from maintaining a large military force without any dependence upon the people and without any control by the people's representatives; and at the same time to prevent him from governing without parliaments, the frequent holding of which had been enacted by statutes so ancient as the reign of Edward the Third, and so recent as lord Clarendon's Act, 16 Car. 2, cap. 1, and had been solemnly promised by that very king in his Declaration of April 8th, 1681.

In relation to the charge against Sidney of ingratitude, sir John Dalrymple (Memoirs, part 1, book 1, p. 19, 4to edit. of 1771) has, as was to be expected, some declamation about "Brutus," and the sentiment that "no obligations to himself could shake off those which he owed to his country." It may, however, be suspected that this will not be generally admitted as a satisfactory justification of the conduct of Sidney, who having obtained

about me will probably be found too tender to hear it. My trial and condemnation do sufficiently evidence this.

"West, Rumsey and Keeling, who were brought to prove the plot, said no more of me than that they knew me not; and some others, equally unknown to me, had used my name and that of some others to give a little reputation unto their designs. The lord Howard is too infamous by his life, and the many perjuries not to be denied, or rather sworn by himself, to deserve mention; and being a single witness would be of no value, though he had been of unblemished credit, or had not seen and

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from the indulgence of Charles the Second permission to return in safety to his native land, (a favour of which, in a letter to Mr. Saville, he says, that he values it not at a lower rate than the saving of his life. See Sidney's Letters, pp. 169, 170, Dodsley's edition of 1742, and the Biographia, art. Sidney) employed the means which he derived from that favour in the promotion of measures to thwart the government of his benefactor. I say to thwart the government; because there is no proof that Sidney entertained any designs against the safety of the person of his benefactor. With respect to what Sidney said, that he did once save the king's life, see p. 877.

Ralph says that this allusion has not been explained.

Dalrymple says, "It is probable that Charles was not ignorant of a fact hinted at by Algernon Sidney, at his trial; to wit, that he had been the cause of preventing a scheme to assassinate the king in his youth. From two letters of Colbert to his own court, dated 4th and 25th August 1670, it appears, that the French court gave information to Charles, of Sidney's being then at Paris, and desired to know how they should act with regard to him; that lord Arlington proposed to Charles, that a pension should be given by France to Mr. Sidney, because he was in straits; and that Charles consented to it. Charles at first also agreed, that he should be at liberty to continue at Paris, but afterwards changed his mind, and desired he might be removed from it. The prescience which Charles, even in the plenitude of his power at this period, had of the consequence of this man, then an exile, and in want, is sweetly flattering to those who enjoy this our temple of liberty, because it shows, that the true greatness of every individual depends upon himself. Upon this head Colbert, in his letter of 4th of August 1670, relates Charles's expressions with regard to Sidney, thus: 'Le 'Roy (Charles) me dit encore, qu'il ne se 'soucioit pas que le dit Sidney demeuroit en 'Paris ou Languedoc, ou en tel autre lieu qu'il 'loi plairoit, pourvu qu'il ne revient pas en 'Angleterre, ou dit il ses pernicieux sentimens 'soutenus d'autant d'esprit et de courage qu'il 'en a pourroient beaucoup nuire.'—'The king '(Charles) said to me again, that he did not 'care whether the said Sidney lived in Paris, 'Languedoc, or any other place he pleased, 'provided he did not return to England, where, 'said he, 'his pernicious sentiments, supported 'with so great parts and courage, might do 'much hurt.' And in Colbert's letter of 25th August 1670, he says, Charles said to him of Sidney, 'qu'il etoit à propos de le laisser re-'tourner en Languedoc, et qu'il ne pouvoit 'être trop loin de l'Angleterre.' 'That it was 'proper to let him return to Languedoc, and 'that he could not be too far from England.' And in other letters I observed, that wherever Charles spoke of Sidney, he called him, 'an 'homme de cœur et d'esprit:' which may perhaps be translated 'a man of heart and head.'"

Boswell, in his Life of Johnson, relates Johnson's sentiments, or at least his expressions respecting the receipt of money from France by Charles, and that by Sidney and his associates. The difference of the lights, in which the conduct of the two parties is exhibited, are not incurious:

"I mentioned," says Boswell, "sir John Dalrymple's "Memoirs of Great Britain and Ireland," and his discoveries to the prejudice of lord Russell and A. Sidney. Johnson: 'Why, Sir, every body who had just notions of government thought them rascals before, it is well that all mankind now see them to be rascals.' Boswell: 'But, Sir, may not those discoveries be true without their being rascals?' Johnson: 'Consider, Sir; would any of them have been willing to have had it known that they intrigued with France? Depend upon it, Sir, he who does what he is afraid should be known, has something rotten about him." In another place of the same book, Johnson is made to say, "Charles the Second was licentious in his practice, but he always had a reverence for what was good. Charles the Second knew his people and rewarded merit. The church was at no time better filled than in his reign. He was the best king we ever had from his time till the reign of his present majesty, except James the Second. He took money, indeed, from France, but he did not betray those over whom he ruled: he did not let the French fleet pass ours." 1 Bosw. Life of Johnson, 174, 4to. 1791.

Johnson's friend (Burke) has given us a much truer picture of Charles the Second:

"The person given to us by Monk was a man without any sense of his duty as a prince, without any regard to the dignity of his crown, without any love to his people: dissolute, false, venal; and destitute of any positive good quality whatsoever, except a pleasant temper and the manners of a gentleman." Letter to a Member of the National Assembly, *1791*, p. 48.

The proofs of the gross unfeelingness and ingratitude of Charles the Second are very numerous. Harris has recorded some anecdotes to establish it. The following story is

confessed that the crimes committed by him would be pardoned only for committing more; and even the pardon promised could not be obtained till the drudgery of swearing was over.

"This being laid aside, the whole matter is reduced to the papers said to be found in my closet by the king's officers, without any other proof of their being written by me, than what is taken from suppositions upon the similitude of an hand that is easily counterfeited, and which hath been lately declared in the lady Carr's case to be no lawful evidence in criminal causes.

'But if I had been seen to write them, the matter would not be much altered. They

printed in Mr. Brand Hollis's edition of the works of Algernon Sidney, in a Note to p. 31, of his "Memoirs of the Life of A. Sidney."

"—— Russell, the painter, related to or connected with the Olivers, told Vertue a remarkable story. The greater part of the collection of king Charles being dispersed in the troubles, among which were several pictures of the Olivers, Charles 2, who remembered, and was desirous of recovering them, made many enquiries about them after the restoration. At last he was told by one Rogers of Isleworth, probably Progers, well known for being employed in the king's private pleasures, that both father and son were dead, but that the son's widow was living at Isleworth, and had many of their works. The king went privately and unknown with Rogers to see them. The widow shewed several finished and unfinished, with many of which the king being pleased, asked if she would sell them; she replied, she had a mind the king should see them first, and if he did not purchase them, she should think of disposing of them. The king discovered himself; on which she produced some more pictures which she seldom shewed. The king desired her to set a price; she said she did not care to make a price with his majesty, she would leave it to him: but promised to look over her husband's books and let his majesty know what prices his father the late king had paid. The king took away what he liked, and sent Rogers to Mrs. Oliver with the option of 1,000*l.*, or an annuity of 300*l.* for her life. She chose the latter. Some years afterwards, it happened, that the king's mistresses having begged all or most of these pictures, Mrs. Oliver, who probably was a prude, and apt to express herself like a prude, said, on hearing it, 'that if she had thought 'the king would have given them to such 'whores and strumpets and bastards, he never 'should have had them.' This reached the court; the poor woman's annuity was stopped, and she never received it afterwards." Anecdotes of Painting in England, with some account of the principal artists; &c. collected by the late Mr. George Vertue, and now digested and published by Mr. Horace Walpole. Strawberry-hill, printed 1762, in 2 vols. quarto, vol. 2, p. 14.

As to the position that "he who does what he is afraid should be known has something rotten about him," it does not appear that Sidney and his associates must have entertained any fears lest it might be known they received assistance from France, in the prosecution of designs which they thought were conducive to the welfare of their country, except in so far as such knowledge must have tended to disconcert their measures and to subject themselves to legal penalties or illegal violence: and as applied to fears of this sort the position is miserable sophistry. Whoever engages in an enterprize, how honourable or beneficial, or how virtuous soever, by which the letter of the law is infringed, will naturally be unwilling that the steps which he is taking should be made known, as long as there is no doubt that the discovery would cause the failure of his enterprize and the infliction upon himself of the mighty penalties of the law. Within less than two years after lord Russell's death, the throne of Charles was occupied by James, in whom Johnson discovered greater virtues and greater claims to reverence and honour than even in his predecessor. Under this auspicious and benignant reign those who had received favourable notice from the king, according to Johnson's own account of Dorset, soon found it necessary to oppose the violence of his innovations, and as enormities grew every day less supportable found it necessary to concur in the revolution.

Yet surely none of those who besought the aid of the prince of Orange to deliver their country from the intolerable tyranny by which it was oppressed, or of those who were concerting plans to render that aid most effectual, would have been willing that all their measures should be disclosed as long as there remained no doubt that the discovery would tend to defeat all their hopes of deliverance. With respect to the receipt of the French king's money, it is needless to contrast the conditions upon which it was received and the purposes to which it was applied by Charles, with the objects for the attainment of which it would be employed by his subjects.

Indeed, the editor of the Letters of Lady Rachel Russell (4th ed. 1792) litigates all the imputations upon Russell and Sidney which are contained in sir John Dalrymple's work, and as to the alledged payment of the money of France to Sidney and his associates, he signifies his opinion, and assigns his reasons for that opinion, that the money may have been appropriated by Barillon to his own use. He shall speak for himself.

"Sir John hath fully proved, that Barillon was duped to an extraordinary degree by lord Sunderland, in the reign of James the Second; why not by lord Russell and Sidney also, in that of Charles the Second; and he certainly was, the more effectually to support an opposition to the arbitrary views of the court. Besides, what juster ground is there for reflection

plainly appear to relate unto a *large treatise* written long since, in answer to Filmer's book, which, by all intelligent men, is thought to be grounded upon wicked principles, equally pernicious unto magistrates and people.

"If he might publish unto the world his opinion, that all men are born under a necessity derived from the laws of God and nature, to submit unto an absolute kingly government, which could be restrained by no law or oath; and that he that hath the power, whether he came unto it by creation, election, inheritance, usurpation, or any other way, had the right; and none must oppose his will, but the persons and estates of his subjects must be indispensibly subject unto it; I know not why I might not have published my opinion to the contrary, without the breach of any law I have yet known.

"I might, as freely as he, publicly have declared my thoughts, and the reasons upon which they were grounded, and I am persuaded to believe, that God had left nations unto the liberty of setting up such governments as best pleased themselves.

"That magistrates were set up for the good of nations, not nations for the honour or glory of magistrates.

"That the right and power of magistrates in every country, was that which the laws of that country made it to be.

"*That those laws were to be observed,* and the oath taken by them, having the force of a contract between magistrates and people, could not be violated without danger of dissolving the whole fabric.

"That usurpation could give no right, and the most dangerous of all enemies unto kings were they, who, raising their power to an exorbitant height, allowed unto usurpers all the rights belonging unto it.

"That such usurpations being seldom compassed without the slaughter of the reigning person, or family, the worst of all villanies was thereby rewarded with the most glorious privileges.

"That if such doctrines were received, they would stir up men to the destruction of princes with more violence, than all the passions that have hitherto raged in the hearts of the most unruly.

"That none could be safe, if such a reward were proposed unto any that could destroy them.

"That few would be so gentle as to spare even the best, if by their destruction a wild usurper could become God's anointed; and by the most execrable wickedness invest himself with that divine character.

on their characters, for making France subservient to the true interests of their country, than on sir John Dalrymple (afterwards earl of Stair) and the other patriots who intrigued with Holland, and thus produced the glorious Revolution? If Sidney received money, he certainly did it with disinterested views, and applied it to worthy uses. A year after the account of his taking it, Barillon, the accuser, thus writes to his master: 'The Sieur Algernon Sidney, is a man of great views and very high designs, which lead to the establishment of a republic,' (vol. 2, App. p. 287.) Sir John may therefore hush his troubled spirits, and depend on never having the violent shock repeated. But why should he have been shocked at all? He cannot say that Sidney ever acted for the interests of France, opposed to those of England, nor doth even the French memorials he hath produced; but till other evidence is produced of Sidney's being a French pensioner, than that of a perfidious French minister, who was also the paymaster, and came to England poor, but returned rich, it is more reasonable to conclude that Barillon embezzled and pocketed what he placed to Sidney's account, or wrote his letter with a design to impose upon his master, or that it hath been foisted into the depôt to mislead posterity. The French being in so close a connection with both Charles and James, when that great man's death brought such an odium upon them, this money connection would certainly have been exposed to remove it. The man who disdained even to ask his life of one unprincipled king, and pistoled his horse* rather than it should be rode by another, could never accept of a paltry pension from him: the fact in every view is totally inadmissible." p. xv.

"It is very extraordinary, that from the time in which Barillon writes so confidently of his intimacy and intrigues with the Whigs or popular party, to the glorious Revolution, there is not the least trace of his having had any other connection with them. Is not this very suspicious? The many articles of false intelligence he sent to Louis concerning things and occurrences preceding the Revolution, proved that he was not so much as acquainted with their persons, or exceedingly duped by them," p. ccxvii.

* This is to be explained by a passage in the Notes to Mr. Brand Hollis's edition (4to, 1772) of A. Sydney's works.

"The following anecdote having been communicated to Dr. Hutcheson of Glasgow, was frequently related by him to his friends: "Mr Sidney, during his stay in France, being one day hunting with the French king, and mounted on a fine English horse, the form and spirit of which caught the king's eye, received a message, that he would be pleased to oblige the king with his horse at his own price. He answered, that he did not choose to part with him. The king determined to have no denial, and gave orders to tender him money or to seize the horse; which being made known to Mr. Sidney, he instantly took a pistol and shot him, saying, That his horse was born a free creature, had served a free man, and should not be mastered by a king of slaves."" Memoirs, p 34, Note.

"This is the scope of the whole treatise; the writer gives such reasons as at present did occur unto him, to prove it. This seems to agree with the doctrines of the most reverenced authors of all times, nations and religions. The best and wisest of kings have ever acknowledged it. The present king of France hath declared, that kings have that happy want of power, that they can do nothing contrary to the laws of their country, and grounds his quarrel with the king of Spain, Anno 1667, upon that principle. King James, in his speech to the parliament, An. 1603, doth in the highest degree assert it: the scripture seems to declare it. If nevertheless the writer was mistaken he might have been refuted by law, reason, and scripture; and no man, for such matters, was ever otherwise punished, than by being made to see his error; and it hath not (as I think) been ever known that they had been referred to the judgment of a jury, composed of men utterly unable to comprehend them.

"But there was little of this in my case; the extravagance of my prosecutors goes higher: the above-mentioned treatise was never finished, nor could be in many years, and most probably would never have been. So much as is of it was written long since, never reviewed nor shewn unto any man; and the fiftieth part of it was produced, and not the tenth of that offered to be read. That which was never known unto those who are said to have conspired with me, was said to be intended to stir up the peop'e in prosecution of the designs of those conspirators.

"When nothing of particular application unto time, place, or person, could be found in it (as hath ever been done by those who endeavoured to raise insurrections) all was supplied by innuendos.

"Whatsoever is said of the expulsion of Tarquin; the insurrection against Nero; the slaughter of Caligula, or Domitian; the translation of the crown of France from Meroven's's race unto Pepin; and from his descendants unto Hugh Capit, and the like, applied by innuendo unto the king.

"They have not considered, that if such acts of state be not good, there is not a king in the world that has any title to the crown he bears; nor can have any, unless he could deduce his pedigree from the eldest son of Noah, and shew that the succession had still continued in the eldest of the eldest line, and been so deduced to him.

"Every one may see what advantage this would be to all the kings of the world, and whether, that failing, it were not better for them to acknowledge they had received their crowns by the consent of willing nations: or to have no better title unto them than usurpation and violence, which by the same ways, may be taken from them.

"But I was not long since told that I must die, or the plot must die.

"Lest the means of destroying the best Protestants in England should fail, the bench must be filled with such as had been blemishes to the bar.

"None but such as these would have advised with the king's counsel of the means of bringing a man to death, suffered a jury to be packed by the king's solicitors and the under sheriff, admit of jurymen who were not freeholders, receive such evidence as is abovementioned, refuse a copy of an indictment, or to suffer the statute of 46 Edw. 3, to be read, that doth expressly enact it should in no case be denied unto any man, upon any occasion whatsoever, over-rule the most important points of law without hearing. And whereas the statute 25 Edw. 3, upon which they said I should be tried, doth reserve unto the parliament all constructions to be made in points of treasons, they could assume unto themselves not only a power to make constructions, but such constructions as neither agree with law reason, or common sense.

"By these means I am brought to this place. The Lord forgive these practices, and avert the evils that threaten the nation from them. The Lord sanctify these my sufferings unto me; and though I fall as a sacrifice unto idols, suffer not idolatry to be established in this land. Bless thy people and save them. Defend thy own cause and defend those that defend it. Stir up such as are faint, direct those that are willing, confirm those that waver, give wisdom and integrity unto all. Order all things so as may most redound unto thine own glory. Grant that I may die glorifying thee for all thy mercies, and that at the last thou hast permitted me to be singled out as a witness of thy truth; and even by the confession of my opposers, for that Old Cause in which I was from my youth engaged, and for which thou hast often and wonderfully declared thyself."

The following Article is printed from the 4th Edition of the Works of Algernon Sidney, published by Mr. Brand Hollis in the Year 1772, and the Notes to it which were inserted in that Publication are retained here.

THE APOLOGY OF ALGERNON SYDNEY, IN THE DAY OF HIS DEATH.

BEING ready to die under an accusation of many crimes, I thought fit to leave this as a testimony unto the world, that, as I had from my youth endeavoured to uphold the common rights of mankind, the laws of this land, and the true Protestant religion, against corrupt principles, arbitrary power, and Popery, I do now willingly lay down my life for the same;

and having a sure witness within me, that God doth absolve me, and uphold me, in the utmost extremities, am very little solicitous, though man doth condemn me.

I am no ways ashamed to anote, that, from the year 1642, until the coming in of the king, I did prosecute the above mentioned principles; and having then finished to the advantage of all Europe, and the honour of this nation, a negotiation, upon which I had been employed in the north, chose rather to remain beyond the seas, than to return into my own country, though general Monk, upon the account of many obligations received from me, did desire me to return, with large offers of all the advantages he could procure for me.

I well knew his power, and did not doubt of his intentions; but though I thought it my duty to submit unto the providence of God, in the strange revolutions brought amongst us, through the unsearchable counsels of his will, durst not recede from the ways of righteousness; and through his grace was able to reject the rewards of iniquity

It being acknowledged, that though I had ever opposed the then triumphing party, no man had ever shewed himself to be a fairer enemy, and that I had done many personal and most important services, as well to the royal family, as unto such as depended upon it, I hoped that no man would search into my present thoughts, nor so far to remember my former actions, as to disturb me in a most innocent exile; and that the most malicious of my enemies should not pretend that I practised any thing against the government, I made Rome the place of my retreat, which was certainly an ill scene to act any thing, that was displeasing unto it.

But I soon found, that no inoffensiveness of behaviour could preserve me against the malice of those who sought to destroy me; and was defended from such as there designed to assassinate me, only by the charity of strangers.

When the care of my private affairs brought me into Flanders and Holland, anno 1663, the same dangers accompanied me; and, that no place might be safe unto me, Andrew White, with some others, were sent into the most remote parts of Germany, to murder me.

The asperity of this persecution obliged me to seek the protection of some foreign princes; and, being then in the strength of my age, had reputation enough to have gained honourable employments; but all my designs were broken by letters and messages from this court, so as none durst entertain me; and when I could not comprehend the grounds of dealing with me in such a way, when I knew that many others, who had been my companions, and given (as I thought) more just causes of hatred against them, than I had done, were received into favour, or suffered to live quietly. A man of quality, who well knew the temper of the court, explained the mystery unto me, by letting me know, that I was distinguished from the rest because it was known, that I could not be corrupted.

No man could have thought it strange, if this has cast me into the utmost extremities; and perhaps occasions of being revenged would not have been wanting, if I had sought them; but, instead of that, I cast myself into unsuspected retirement in the most remote part of France, where I passed above eleven years, and was drawn out of it only by a desire of seeing my aged father before he died, and obtained the king's passport for my security.

My father died within a few weeks after my coming over; and, when I prepared myself to return into Gascony, there to pass the remaining part of my life, I was hindered by the earl of Leicester my brother, who questioned all that my father had given me for my subsistence; and by a long and tedious suit in chancery, detained me in England, until I was made a prisoner.

When a favourable decree, obtained in chancery, gave me hopes of being freed from such vexatious business, I reassumed my former design of returning into France; and to that end bought a small parcel of ground, in a friend's name, with an intention of going immediately unto it. This proceeded from the uneasiness of my life, when I found, that not only the real discontents, that grew to be too common, were ascribed unto me, but sham plots fastened upon me, so as I could never think my life a day in safety.

Not long after the discovery of the popish plot, his majesty was informed of a great plot of the nonconformists, and that I was at the head of it; and though (being admitted unto his majesty's presence) I did truly shew unto him, that there neither was nor could be any thing of that nature, as things then stood; because it would cast his majesty into conjunction with the popish, which they did most abhor; the sham was continued, as appears by the Mealtub business. Though my name was not there found, I am well informed, that, if it had succeeded, I should have been involved in it.

Other ways were invented to vex and ruin me. When I only looked over a balcony to see what passed at the election of the sheriffs of London, I was indicted for a riot.

In April last I was told by a person of eminent quality, virtue, and understanding, that I should infallibly be made a prisoner. I asked upon what pretence. He alleged some things that were entirely frivolous, relating unto vile persons, whose faces and names I did not know, but concluded some or other would be found; and that if I was once taken, it mattered not for what cause; it being impossible to avoid condemnation, before such judges and juries as I should be tried by.

About the middle of June the town was full of rumours of a plot said to be discovered by Keeling, and not long after by West. Some persons fled, and a proclamation issued to have them apprehended. My name was in every coffee-house, and several informations were given me, that I should certainly be seized. I mentioned this to several persons; but knowing

no reason why I should absent myself, resolved not to do it; and continued in that mind, though I was told, early in the morning on the 26th of June, that the duke of Monmouth was retired and colonel Ramsey had rendered himself.

This concerned me so little, that I spent that morning upon my usual studies, or entertaining such friends as came to see me; and, whilst I was at dinner, a messenger came and arrested me in the king's name, by an order from four lords of the privy council. Immediately after sir Philip Lloyd came, with another order from the same lords, to seize my papers. He searched many secret places, but did not find one that he thought fit to take, except such as lay openly upon my table, or in a trunk that had not been shut in some years. When he had ransacked all, and put what he pleased into a trunk and pillowbear, he would have persuaded me to put my seal unto them; but I, remembering what had passed at colonel Mansell's lodging, and some other occasions of the like nature, refused to do it; whereupon he put his own seal, but promised, that they should not be opened, unless it were in my presence; which was observed as other promises of that nature have been; for I never saw the said trunk or pillowbear to this day. From my own house I was carried to the messengers, and from thence to Whitehall, before the four lords, by whose order I had been apprehended.

The lord keeper [North] asked me some questions concerning sir John Cockram, and Aaron Smith, unto which I returned answers with all the respect I could, without prejudice unto the truth; and, when I thought that I had given full satisfaction, was taken into the custody of a serjeant at arms, and, by a warrant from sir Leolin Jenkins *, [secretary of state] committed to the Tower for high treason, and there detained a close prisoner. Within a few days after, my house, money, horses, goods, and chattels, were seized both in the town and country, which I take to be contrary to the laws of the land, in these three points; first, it is expressly said in Magna Charta, confirmed by above thirty parliaments, and many other statutes now in force, that no man shall be imprisoned, unless it be by the judgment of his peers, upon the testimony of two credible witnesses, or his own free confession, without force or violence; whereas here was no indictment or witness produced until the 7th of November, and, though extreme violence was used to me, I confessed no crime at all. 2dly, The law of England appoints imprisonment 'in custodiam,' not 'in pœnam,' acknowledges no close imprisonment; whereas I was kept with the most extreme rigour, to the great prejudice of my health, and almost destruction of my life, without any consolation from my friends, until a few days before my trial. 3dly, The law of England admits of no seizure of goods till after conviction; whereas divers lewd fellows were put into my house who, besides many insolencies committed, did (as I am informed) feloniously take away my coaches, several parcels of goods, and some money, long before any indictment was exhibited against me, and, though I made several addresses unto the king and council for the removal of those violences, could obtain no relief.

November 6, I received notice from the lieutenant of the Tower, that an habeas corpus was brought unto him, and a command to bring me the next day before the king's bench; and I was accordingly brought into the palace-yard of Westminster, between ten and eleven the clock in the morning, before the grand jury assembled, or the king's counsel could know the bill would be found, unless they had the faculty of divining, or held such an intelligence with the grand jury, as utterly overthrows all justice.

The bill being found, I was immediately hurried to the bar, through a strong guard of soldiers, to be arraigned. The bill was read in English and in Latin. I found it to be very long, perplexed, confused, and containing a heap of crimes, distinct in nature, distinguished from each other by laws relating unto several statutes, which required several considerations; no overt act was precisely set forth, with its due circumstances; no man named, with whom I was said to have conspired; the meetings to conspire were said to be on the 30th of June, and many other days both before and since; whereas I was then, and had been some days before, and ever since, a close prisoner: hereupon I desired the advice of counsel, to frame exceptions against the bill, professing that to me it seemed to be void, as many had been declared to be so, and particularly that of the duke of Somerset. I instanced, that the court had allowed unto sir H. Vane the liberty of making his exceptions, and pleading over, which the laws allow in matters of life; but all was refused, without any other reason than the will of the judges. I then desired counsel to frame a special plea, opening, as well as I could, the scope of it; but could obtain nothing; and lastly, when I offered a special

* "Hithe. Sir Leolin Jenkins, son of a taylor, judge of the Admiralty, was in hopes to be archbishop of Canterbury; employed in four embassies, and whose indefatigable industry in promoting a peace for France, has been our ——; [curse or ruin.] He affirmed in the House of Commons, That upon necessity, the king might raise monies without act of parliament. A seasonable argument to persuade all the Grand Juries in England, to petition for a new Parliament. Or a list of the principal labourers in the great design of Popery and arbitrary power; who have betrayed their country to the conspirators, and bargained with them to maintain a standing army in England, under the command of the bigotted popish Duke, who by the assistance of the L. L.'s [Lord Lieutenant's] Scotch army, the forces in Ireland, and those in France, hope to bring all back to Rome." Amsterdam, printed in the year 1677, in quarto. [By Andrew Marvell.]

plea, ready engrossed, the court would not receive it, unless it might be peremptory, declaring, that if it were over-ruled, I should be no further heard; which condition I was not willing to accept of, inasmuch as, though I believed my plea to be good, I was more confident of the merits of my cause; and, lest I should be deprived of the benefit of pleading, was forced to come to the general issue.

This proceeded merely from my own ignorance in the law, and want of counsel, which if I had had, the court could not have imposed so notorious a fraud upon me, as to make me believe, that I could not be admitted to plead not guilty, if that special plea came to be over-ruled; every one that is any-ways versed in the law knowing, that I might do it without danger. If it had been received, the court would have been obliged to cut off those intricacies, ambiguities, by which I was entangled, and the jury brought to bring in a verdict which they did not understand; or impudently, in the face of the world, to have shewn, that they had no consideration of law or common sense: and whatsoever they did, might then have come to the general issue. Being driven upon these extremities, by the violence and fraud of the chief justice, who threatened, that judgment of treason should be immediately entered, if I did not come to the general issue, I was forced to plead not guilty, and thereby lost the advantage which was never to be recovered, unless the judges could have been changed: they, who knew I could never be condemned upon such evidence, as, by consulting with the king's counsel, they knew would be produced, unless the matter could be rendered unintelligible by a common jury, resolved against any thing that should explain it, or make the truth to appear, and would never suffer me to get out of the snare in which they had caught me.

The court, for fashion's sake, allowed me a fortnight to prepare for my trial; but, lest the fraud or errors of the indictment should be discovered, as that time might be of any benefit unto me; the copy of it, and the help of counsel, were again denied, unless I could tell upon what points in law I would desire their advice. This was no less than to enjoin impossibilities. Having never studied the law, I was utterly ignorant of it; the indictment was so long, perplexed, and intricate, that the ablest lawyers could give me but a very imperfect account of it upon hearing, though the whole contexture of it seemed to be such as was not to be upheld by law; it was hard for them justly to fix upon the ways of overthrowing it, when the exceptions, and the special plea that I offered, had been rejected, unless they had had it before them, and nicely examined it; much less could it be done by me, who am utterly unexperienced in those matters. Mr. Attorney [sir Robert Sawyer, knt.] had then so much confidence, and so little charity, as openly to avow, that I should not have counsel, lest they should furnish or teach me the points of law that I might insist upon.* This appeared strange unto all those who have any knowledge of the laws of God or man, and that are not equally deprived of charity and humanity. The obtaining of justice is the end of the law, and truth the rule of it: hereupon it is agreed by mankind, that every man ought to know his accusation, that he may know to direct his defence, or receive advice, if he be ignorant in it. It is an absurd perversion of all law, to say, that I heard it read; when it was rendered so long and intricate, that neither I, nor any other man, was, upon reading, able to comprehend it. One of the worst acts that were imputed unto Caligula, the worst and basest of men, was, that he caused edicts to be written in a hand, and set up in a place where no man could read them: hereby he turned the law into a snare, and destroyed those who did not conform themselves unto the rule they never knew. They fall under the same condemnation who make accusations obscure, and suffer them not to be examined, lest they should be understood. To evade this, my prosecutors falsely pretend, that no such privilege is allowed to prisoners in England. But, besides that natural and universal rule of justice, which can be over-ruled by no municipal law, I did produce the stat. of 46 Ed. 3, which doth plainly enact, that all men, in all cases, whether they be such as fall out against the king, or any others, shall have copy of such records as are against them; and shewed that the parliament, whose example all other courts ought to follow, had allowed unto the earl of Strafford, the earl of Danby, the lord Stafford, and the popish lords now in the Tower, copies of their indictment: and, if it had been pretended, that such a privilege was allowed only unto peers, I was ready to say, that though I am not a peer, I am of the wood of which they are made, and do not find, that our ancestors were less careful of the lives of commoners, than of peers, or that one law is made for them, and another for us; but are all entirely under the same law, and the same rules.

I confess that, at the time of my arraignment, I was not fully provided with arguments and proofs of these matters; but when I came to my trial, had those that were abundantly sufficient: nevertheless the chief justice (who, by his oath, and the king's, ought to have informed me of that law, if I did not know it) would not suffer the statute to be read, when I produced an authentic copy of it, nor allow me the copy of my indictment, which, according unto the true meaning and express words thereof, I demanded.

Though I was thus irregularly hurried unto trial, I thought that my birth, education, and life,

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* "Chipping Wickham. Sir Robert Sawyer, a lawyer of as ill reputation as his father. Has had for his attendance this session 1,000*l.*' and is promised, as he insinuates, to be Attorney General and Speaker of the House of Commons." A seasonable Argument, etc.

might have deserved a jury of the principal knights and gentlemen that were freeholders in Middlesex; or, if that rule were broken, the most eminent men for quality and understanding, reputation and virtue, who lived in the country, though they had not freeholds, might have been taken to fill up the pannel. The importance and difficulty of the matter in question seemed farther to enforce it; but, when a copy of the pannel was sent unto me, I found that all rules of decency, discretion, and humanity, had been neglected, as well as those of law; the bailiffs had not been suffered to summon such of the freeholders, in their several hundreds, as seemed most fit for such a service; but received orders to summon by name such as Graham and Burton had, with the under-sheriff, agreed upon; the copy of the pannel was sent unto me before one of them was summoned; and, if I am rightly informed, some of the best being put in only for fashion-sake, did never receive any summons; but sure I am they did not appear.

The life I have led might have given me some kind of knowledge of such as reasonably might be thought fit to be my judges; but I did not know the face of one, nor the names of more than three of the whole panel, and they last, as did not appear. Upon examination I found, that they had not only put in very many that were not freeholders, but picked up a rabble of men of the meanest callings, ruined fortunes, lost reputation, and hardly endowed with such understanding, as is required for a jury in a Nisi Prius court for a business of 5*l*.

This might have been a little mended by sifting, if the reasons alledged against such as were the king's servants in pay, wanted freehold, or, for some act specified, were notoriously infamous, had been accepted; but the lord chief justice being pleased, without pretence of law, reason, or precedent, or suffering the point of law concerning freehold to be argued, to reject my exceptions, I was forced to challenge them peremptorily, whom I knew to have been chosen to destroy me; and was thereby deprived of the benefit allowed by the law, and forced to admit of others most like unto them (whereas it is said, that I rejected men of quality, and took such as were mean, I do profess, that I do not know of a man, family, name, or fortune, upon the panel, but Mr. Burt, sir Charles Gerard, and Mr. Hawtray, whom I resolved to have accepted; and, if I did challenge any other like unto them, it was merely by mistake;) and, to embroil the minds of a jury thus constituted, the king's counsel produced Mr. West, colonel Rumsey, Keeling, and sir Andrew Foster, to tell stories upon hearsay. The three first spake of a plot between themselves and others, in which I was no more concerned, than that they, who had not reputation to carry on such a work, were willing to make people believe, that I, and some that had more, were engaged in it. This, in truth, did very much tend to my justification; for it is not to be imagined, that, if I had been engaged in their designs, I should not rather have communicated with West and Rumsey, than such mean persons, as were hardly in a distance of being known by me: and Foster's deposition went no farther, than that, as the lord Howard said, some Scotch gentlemen were desired to come up upon a pretence of treating concerning Carolina, some did come to treat of the same; but of me, or any correspondence between me and them, he says not a word. The lord Howard's deposition was very rhetorical, but nothing at all to the present purpose. The indictment set forth a conspiracy on the 30th of June, wherein I, and divers others to the jury unknown, did then, and many other days both before and after, in the parish of St. Giles's, not having the fear of God before our eyes, at the instigation of the devil, had traiterously conspired the king to depose and kill; the government to subvert; to levy war, and a cruel slaughter of his subjects to make; and, in order hereunto, had written a false and seditious libel or book to stir up the people.

The witnesses produced by me were three eminent peers, two gentlemen of great quality, cousin germans of the lord Howard, a doctor of divinity, a French gentleman, two of my servants, and a very considerable citizen. Six of these did depose, that the lord Howard, with hands and eyes lifted up to heaven, and calling God to witness, had most solemnly declared he knew of no plot; believed there was none; took that which is mentioned, to be a sham invented by the priests and jesuits, and the more dangerous for being a sham, because no man knew where it would end. Four of them said expressly, he had, with the same asseverations, declared his confidence, that I knew of none, for that I was so much his friend that, if I had known of any, I would have communicated it unto him.

Before I was brought to my trial, I had set down a certain method to be kept in making my defence, and twelve points of law to be argued by counsel, or saved to be found specially, if the jury did find any fact against me. But all was inverted by the violence of the chief justice, who perpetually interrupted me; and was observed so well to choose his time of breaking of my discourse, as never to suffer me to finish any point that pinched too hard upon the undue practices of my prosecutors, or most conduced to my defence. Whensoever I cited a law, or a judged case, that made for me, or proposed a point of law to be argued or reserved, he would tell me it was nothing to the purpose, they had already determined it, and obliged me to be silent. Then I thereupon said, it was to no purpose to speak, if law, reason, and truth, were not regarded. He told me, that if I would not speak, they knew how to proceed.

When, by the impudence of his extravagance, I was driven into these straits, I saw no better way than to shew, that the only witness against me was the lord Howard; and he

could deserve no credit; that having, at the lord Russell's trial, acknowledged, that the religious obligation of an oath did not consist in the outward administering of it, but the calling of God to be a witness unto it; that he had there, as in the presence of God, asserted things inconsistent with what he had then sworn (so as Mr. Howard said it was impossible that what he said unto him, and what he had then sworn in the court, could be true, unless his lordship had one soul on Sunday, and another on Monday;) that he had thereby sworn himself perjured, which was beyond any legal conviction, and ought to destroy his testimony, as well as if he had been legally convicted.

That he had now added new perjuries unto the former, in swearing things different from, and inconsistent with, that he had sworn against the lord Russell; and then concluded, that he knew no more.

That, being under the guilt of many confessed crimes, the terrors of death, the despair of obtaining pardon, unless it were by the drudgery of swearing, as was testified by Mr. Blake, or doing other jobs, as had been said by Hunt and Burroughs, who durst not appear, though subpœnas had been sent them; he did in effect confess his former crimes were to be redeemed only by committing more; he ought not to be credited; that he was my debtor; and, having defrauded me in the matter, and for the money, with which I had trusted him, coming to my house under the name of a friend, he had endeavoured to get my plate, and other things of value into his hands.

That the matter of his deposition was as absurd and impossible as false; that the six, which were said to be a select council, were selected by no man; that they, not being chosen by any, could not erect themselves into a cabal, to manage such business as were by no man committed unto their charge: that they did not know, and could have no confidence in one another; that I had never spoken unto the duke of Monmouth until he brought the said duke to dine with me by a cheat put upon us both a few days before the pretended meetings; that, upon such occasions, when men did invite themselves to conspire, they did ever choose such as they trusted, and could help forwards the designs for which they did conspire; that the lord Howard was trusted by none of them, and was so far from being able to do any thing towards such an end, that he durst not say he could bring five men into the field, furnish five pounds by his purse or credit, or knew how to command them if they were brought together by any other; that, if he said the same thing of me, I might confess it; and did confess, I did not know five men in England that would follow me; and could have said very much more, if I had not been hindered by the chief justice his frequent interruptions.

That, his deposition being destroyed, nothing remained; or though contrary to law and reason it were received, it could be of no value, being single.

That no use could be made of the papers said to be found in my house. That, though the government of France is said to be violent, no use could be made of many papers of most dangerous consequence said to be taken in M. de Fouquet's house, by the king of France his officers; and the error of not inventorying them, in the presence of some persons trusted by him, was never to be repaired, and he had been saved by it. That no man said I writ them, and similitude of writing, in criminal cases, could be no evidence, as appeared by the judgment of the chief justice Keeling, and the whole court in the lady Car's case.

That, whosoever writ them, they appeared to be only some scraps of a large treatise, in answer to Filmer's book, which, being full of abominable maxims, might be opposed by any man: the like having been written by one White a priest, in favour of Cromwell, when he was in possession of the power; he, though a tyrant, abominated it, and a gentleman who presented it: that, if I had written and published a book, I must be answerable for the contents of it, the whole being considered; but when a few sheets, relating unto some hundreds mentioned in them, were produced, not only the scope of the whole remained unknown, but the antecedents and the consequents of the words they had read, being kept secrets, no man could say whether this work were good or evil, true or false: that, when I desired those papers brought into the court should be all read, it was absurdly proposed, that I should name the passage, I, not knowing any word that was in them; that the ink and paper did evidently shew they were very old, and it was impossible they should have any dependence upon business pretended to be now in agitation; such as had been written many, perhaps twenty or thirty years ago, could not relate unto the pretended consultations within ten months.

That no tribunal did ever take notice of a man's private, crude, and undigested thoughts: that though the inquisition is the worst and most bloody tribunal that hath been known in the world, I never feared to write what I pleased against the religion there professed, when I lived under it; and, though it raged in Spain more than any other place, no monk could be questioned for any such writings, though they contained the most dangerous heresies, if not published; and it were enough for him that had written them, to say, that he was perhaps mistaken. This being so, there is neither matter nor evidence; the lord Howard's testimony is nothing in itself, and cannot be supplied by that which is also nothing, or, if it were to be received by itself, could have no relation to the consults of which he accuseth me. I must ever insist upon the law of God given by the hand of Moses, confirmed by Christ and his Apostles, whereby two witnesses are necessarily required to every word, and every matter. This is received by all that profess the name of Christ, and so understood by all, that no man in any place can be put to

death, unless two or more testify the same word or thing. The reason of this is not because two or more evil men may not be found, as appears by the story of Susanna; but because it is hard for two or more so to agree upon all circumstances relating unto a lye, as not to thwart one another: and whosoever admits of two testifying several things done or said at several times or places, conducing, as is said of late, unto the same ends, destroys the reason of that law, takes away all the defence that the most innocent men can have for their lives, and opens a wide gate for perjury, by taking away all possibility of discovering it. This would be far more mischievous in England, where there is no law of retaliation, than other countries, where a false witness undergoes the same punishment as should have been inflicted upon the accused person, if his words had been found true; but the law of England doth require two witnesses unto the same thing, in the statut. Ed. 6, whereby compassing, by express word, to depose the king is made penal by forfeiture of goods; etc and the stat. 3 Eliz. 2, & 13 Car. 22, enacting, that conspiring to levy war should be treason, necessarily required two witnesses for the proof of it. The admission of two testifying things passing at several times and places, is but a new invention. The lords were brought to swallow it at the lord Stafford's trial, by the perfect concurrence of the testimonies of Turbervile and Dugdale, in the same thing, viz. murdering the king, though the one was in France, the other in Staffordshire; but if that, which was then perhaps too far strained, be carried so much farther, as to extend to any thing that these gentlemen shall fancy may conduce unto the same end, there is no safety in the law, and no man can be found innocent, unless he please, as was said by one of the worst magistrates that ever was in Rome in the worst time, "scituros neminem se invito reperiri posse insontem." Sig. de imp. occ. That though there were such a number of witnesses as the laws of God and man require, and they of credit, no crime is fixed upon me that is or hath ever been declared to be treason by the law. It is said in the indictment, that I conspired the death of the king: but no man said, that any mention was ever made of it in my presence; even the king knows I am not a man to have any such design; and I am no more capable of it than of eating him, if he were death [dead] I think I may say, I did once save his life, but I am sure I never endeavoured to take it away. If the meetings mentioned were to be taken for conspiracies against his majesty's life, something must have been there proposed and resolved concerning the ways, manner, time, place, or persons, by whom it should be effected; of which not one word is pretended, nor that he was so much as named.

That conspiracies take their denomination from the thing that the conspirators endeavour to compass; and no men were ever said to conspire to do that which was never spoken of amongst them.

That the compassing of the king's death, declared to be treason in the first branch of the stat. 25 Ed. 3. was meant his corporal death, inasmuch as, in his politic capacity, he can never die; and cannot be imployed by the branch relating unto the levying of war, which is an act distinct in nature, and distinguished by law from it; the authorities of Coke and Hales, were alledged to prove this distinction, that to levy war was not to compass the death of the king; and, being treason of different species, the overt-act of the one could not be the overt-act of the other: that conspiring to levy war, was not treason of itself, nor by implication, as appeared by several temporary acts of the 1 of Mar. 13 Eli. 13 Car. 16. and others, whereby after a certain time during their lives, to conspire to levy war is made treason, which had been impertinent, if it had been ever so by the ancient stat. of 25 Ed 3.

The case of sir H. Vane was alledged, who, though he had been an eminent man in all the counsels relating unto the first war, by which the late king was brought to death, it was never imputed unto him, because every man knew he had no hand in it; and, though he did not deny but he had the like part in the war continued against his majesty now reigning, he could not be convicted without proof of his appearing with a regiment in Southwark: but, as to the present case, here is neither king brought to death nor war levyed, nor any thing done in relation either. Here is nothing but a meeting acted —a conspiracy wherein it is not so much as pretended, that the matter which they are said to have conspired, was ever mentioned; and shew war my accusers dream of, was to be made without men, money, arms, ammunition, officers, soldiers, places, or any thing done towards the providing any of them. Much might have been hereupon said concerning the incongruity, vanity, falsity, and absurdity, of lord Howard's stories: at the lord Russell's trial he made the foundation of the council of six to have been in prosecution of the earl of Shaftesbury's designs; and their apprehensions, that a business known to so many, could not continue secret; and pretended their end to have been, to adjust, with much fineness, a business consisting of many pieces; whereas it doth [not] appear, that any of the six (except himself) knew any thing of what that earl had designed; but certain it is, that none of them had in a long time had any communication with him. The duke of Monmouth and himself thought him to be mad. I could say much of the earl of Essex his thoughts of the same kind; and, besides the known dislikes which he had unto me, and I unto him and his ways, I did not see his face in almost a year before he went out of England, and had no communication with him afterwards. No man but the lord Howard had to this day explained the vast designs that were then known to so many, but they could not be concealed; and he had not told the name of one of the 10,000 brisk boys, that were to do such wonders. If he say true, nothing was done to adjust with

such fineness the business of many pieces, beyond the most common discourses; and no word fixed upon any man except the duke of Monmouth, who was of opinion, that a rabble could not resist a well methodized army. A scholar, that knoweth not the difference between method and discipline, might give such a term unto the right soldiers of an army; but he that attributes it unto a soldier, shews, that the whole is an invention of his own.

The management of this affair by the council, or cabal, was equal unto the reasons of forming it: not one of those pieces were taken into consideration: no care taken of providing men, arms, ammunition, or places; no mention made of any correspondence in city or country, and money, which was the principal point, was spoken of only jocosely, or by the way of mirth.

This is a new way of carrying on the greatest business in the world, and, if it were true, could only shew, that the six were as mad as some of them thought the earl of Shaftesbury; but, if the reputation that some of them have or had in the world, be compared unto that of the lord Howard, it will be thought more probable that he is a liar, than that they were fools.

The rest of the romance is suitable unto this. He saith, that a correspondence was resolved with the earl of Argile; but doth not say how, by whom, when or why. The matter relating unto the other Scotchmen is not less crude: such as best understood matters of Scotland should be sent for; a canting letter written, and sent by Aaron Smith; but he neither tells certainly who writ the letter, or to whom it was directed, what were the express words or contents of it, nor whether it was ever delivered, or not: and he was so careless of this important affair, as not to remember the names of men; and he, that ought to be satisfied they were fit for such a work, was forced to learn the name of sir —— Cambell, by description, which is impossible: no man can know the likeness of a picture, unless he knew the man for whom it was drawn; nor by description him that he doth otherwise know. The last part of that story agrees well enough with the rest. Having embarked himself and his friends in this vast business, and advanced it so far as you have heard, he thought that all was well, and it did not deserve his farther care: he lay idle at the least ten weeks in London, or at Knightsbridge, contenting himself only in asking me, whether Aaron Smith was gone; and then thought himself more concerned in visiting a manor of about 200*l.* a year in Essex, than advancing the business of war and state that he had undertaken: after having for a while loitered there, with the same indifference and serenity of mind, he made another journey to the Bath: this is the parenthesis he mentions, that lasted almost six months, some may impute it to the sedate constancy of a philosopher, others to the stupidity of a beast; but whosoever considers the nature of the thing, and the temper of the person, can never believe, that a wise or virtuous man could so shamefully neglect the most important interest of his friends or country; and such as know how much his lordship, through a most tender love unto himself, is concerned in the most trivial affairs that relate unto his person or interest, will as little think he could be so well at leisure as not to look after those that came so near unto his life and fortune, if any such had been then in agitation. "Oportet mendacem esse memorem." If the proverb be true, that liars ought to have good memories, his lordship, at my trial, ought to have thought of what he had said at the lord Russell's; and, if the story had been too long to be exactly related, he might have had recourse unto that which is in print. Sir H. Vane the elder, and others being examined at the earl of Strafford's trial, desired to see their first examinations taken in writing, lest they might fail in any word; and the prosecutors, as well as judges, seeking nothing but truth and justice, allowed it. If the same ends had been now sought he might have read out of the book what he had said at his first trial, and suffered to say no more: but the drudgery of swearing was not over; some other jobs must be done, before he could have his pardon; that which he had said was not enough, and notwithstanding his oath, that he knew no more, he must swear more, whether he knew it, or not. A fruitful fancy, spurred on by fear and restrained neither by conscience nor shame, furnished matter abundantly; and all was received, though directly contrary to his former deposition upon the same thing: he frames a formal speech for Mr. Hamden, as an overture of the sessions; reduced the jocular discourse of money to a more serious consideration of raising thirty or 25,000*l.* supposes the lord Russell to have been the writer of the letter sent by Aaron Smith; makes another speech for Mr. Hamden, which he calls invidious, as tending to an intention of referring all to the will of the parliament; but neither fineth upon any thing done, or to be done, nor relates a word saith by me, unless it were in private unto himself, concerning A. Smith.

Such stuff would not (as I suppose) have been received in any court of justice in Europe, nor in Westminster-hall, till it was furnished with these judges; but they resolving to receive all that was against me, though evidently false, would neither suffer me to say the tenth part of what I had to alledge in my defence, nor to explain or prove that which I proposed. When the chief justice did cut me off, I did as justly as I could, desire him to proceed softly and fairly: that a wise heathen had said, no delay ought to be esteemed long, when the life of a man was in question; and that the Scripture put an evil character upon those whose feet were swift to shed blood; but all was in vain; the points of law concerning the different sorts of treasons could not be heard; no council allowed to argue them; no point of law saved, when I shewed, that here was in my case neither conspiracy against the life of the king, nor war levied; and that if, by

long series of far-fetched incoherent suppositions, any man fancied me to be guilty of treason, it must be by constructions which none but the parliament could make: to prove this I cited the stat. 25 Ed. 3, and desired it might be read, with the proviso that no other court should take cognizance thereof; but I was overborne by the unreasonable violence of the chief justice, and denied the reading of the statute, the assistance of counsel to argue the points of law, or that any of those proposed by me should be saved unto me.

The first was, that, by the law, no man could be tried upon an indictment laid in a county, unless it were composed of freeholders. 2dly, The Court having declared, that I was tried upon the stat. 21 Ed. 3, it ought to be declared upon what branch of that statute. 3dly, That, though a conspiracy to levy war were swore by one witness, and that a credible one, I ought not to be thereupon indicted by the stat. 1 Ed. 6, 12, the 5 Ed. 6, 11, and the 13 Car. 2. 4thly, That conspiracy to levy war is not treason, by the stat. 21 Ed. 3. 5thly, That, by the same, conspiring to levy war, is not an overt-act of compassing the king's death; and, though overt-acts were pretended, they are not to be inquired into, without the testimony of two credible witnesses by the 1 Ed. 6, 12, and 5 Ed 6, 11, and I ought not to be obliged to confess such a conspiracy, if it be not proved. 6thly, Without admitting the fact, I ought to have counsel to argue the points of law arising upon the evidence; inasmuch as I may have cause to demur unto the evidence, and want their advice thereupon. 7thly, That, supposing the lord Howard to be a credible witness, he is but one: no man can be thereupon found guilty, as appears by Whitebread's case; the papers cannot be taken for another witness, similitude of hands is no evidence, whosoever writ them; they can have no concurrence with what is said, being unknown to him, written many years since, as appears by the ink and paper, and no way relating unto the matter in question, nor applied unto any particular time or case whatsoever. 8thly, That, though the meetings mentioned by the lord Howard were supposed to be to consult to levy war, such assemblies could not be taken for overt-acts of conspiring the death of the king, no word or overt-act tending thereunto in giving in evidence; nothing arising from suppositions, arguments, presumptions, or constructions, can make a man a traitor: the end of the stat. 25 Ed. 3, was to take away ambiguities, and variety of opinions, and the decisions of all such cases as are thereby referred to the parliament.

If these points were not allowed, counsel might have been admitted to argue them, or saved to be found specially, as was desired; but all in vain.

I well knew the disorder that had been brought upon the nation in the time of Rd. 2, when as it is said in the stat. 1 H. 4, no man knew what to speak, or what to do for fear of treason; that the like was declared, stat. 1 Ma. and by the Ed. 6, express words, and open preaching, to compass the deposing of the king, setting up another title, etc. though proved expressly by two credible witnesses, were not made treason; and could have easily inferred *a fortiori*, that a polemic discourse left imperfect, never examined, never shewed to any man, writ long since, relating in general unto such cases as those of Tarquin, Caligula, Nero, Vitellius, Peter the Cruel of Castile, the degenerated races of Meroveus, or Charles the Great, or the like, could have no relation unto any statute of treason in England; but the chief justice would not suffer me to speak.

This explained a mystery which no man could before understand: they, who saw I was not brought to a trial with the lord Russell, believed, that, if the gaols did not furnish some other evidence against me,* I should be released without a trial; but when these, and many other points of law, were overruled without hearing, it plainly appeared, that my trial was deferred until an undersheriff could be made, that would pack a jury with Burton and Graham, and the bench could be filled with such judges, as had no understanding of the law, nor regard unto reason, justice, truth, or common sense; for words, though sworn by two credible witnesses, could not be brought within the 25 Ed. 3, only by any but such as these, according to the authority of Cook and Hales, and Pine's case, nor taken for an overt-act of compassing the king's death. But they could bring the most confused improbable and contradictory relations of one man of no credit a proof of a conspiracy; and as an overt act hath [hatch] up his credit with papers as ill proved, and containing matters unknown unto him, and having no coherence with what he said. Such as they only could suffer a witness to guess a

* "Mr. Aaron Smith deposed, that he was a prisoner in the Tower when lord Russell and colonel Sidney were tried; and was kept close prisoner above 19 weeks at 5*l.* a week charge, and two warders watched him, or lay in the room. That one of his warders told him that Mr. Ambrose Philips was come to speak with him, and had an order from one of the secretaries to come as often as he would, and bring whom he would with him; but then he was alone. When Mr. Philips came in, after some other discourse, he told him, it was in his power to make himself what he would; for, said he, 'You know this rogue Sidney is a traitor, and you may make yourself what you will, if you will discover what you know of his designs against the government.' That he replied, 'He could not say any thing that could touch a hair of colonel Sidney's head;' and that then Mr. Philips said, 'If he might advise the king, he would have all the damned Whig rogues hanged, &c. &c. &c.'" A Display of Tyranny, part 2, p. 281.

man into treason, or make the most extravagant guessings or supposition to pass for evidence.*

Such as they only could fancy, that a few scraps of old paper, refuting the doctrines of one of the most wicked and foolish books that

* "The sheriffs were, Peter Daniel, esq. and Samuel Dashwood, esq. who, together with sir Henry Tulse, knt. mayor, were appointed by a commission under the great seal. The under sheriffs were, Thomas Rowse, gent. and Charles Hargrave, gent. There was all this summer [1681] strange practising with witnesses to find more matter against him [the earl of Shaftesbury:] Wilkinson, a prisoner for debt, that had been often with him was dealt with to accuse him. The Court had found out two solicitors to manage such matters, Burton and Graham; who were, indeed, fitter men to have served in a Court of Inquisition, than in a legal government." Burnet's Hist. of his own Times.

"Mr. Graham, the Solicitor of all the late sham Plots upon Protestants, and pay-master of corrupt juries and perjured witnesses, solicited this prosecution [against the earl of Shaftesbury] and hence took his first step to such preferment as enabled him to give eight or 10,000*l.* with a daughter." A Display of Tyranny. Or Remarks upon the illegal and arbitrary proceedings in the Courts of Westminster and Guild hall; from the year 1678, to the abdication of the late king James: in which time the rule was 'Quod principi placuit 'lex esto.' London, printed anno Angliæ salutis primo, 1689, part 1, p. 66, in duod.

"Then the jury immediately gave in their verdict, that the defendant [sir Samuel Barnardiston, bart.] was guilty of the offence and misdemeanor charged in the indictment; as no doubt they resolved to do, before they heard one word of the matter. The judgment upon this verdict was, "That the defendant should pay 10,000*l.* fine, and be imprisoned till paid, and to find sureties for his good behaviour for life. Accordingly he was committed for the fine, to the King's-bench, and continued a prisoner four or five years, which satisfied not; but Graham and Burton, those instruments of rapine and oppression, broke in upon his estate, and besides the waste and destruction made, levied to their own use and the king's about 6,000*l.*" The same, p. 214.

"Upon this occasion of health drinking, I cannot hinder myself from remembering the case of Mr. Elias Best, a substantial citizen, but one who had been an ignoramus juryman, a great reproach and an unpardonable crime in that day, as, sir, you very feelingly know. He was indicted for the frolic of drinking to the pious memory of honest Stephen College, and condemned to a fine of 1,000*l.*; to stand three times in the pillory; and to give sureties for his good behaviour for life. On this judgment, he was imprisoned three years; to the loss of a good trade, and to the ruin of his health and estate; and when almost ready to expire, he was graciously pardoned, upon payment of 200*l.* to the Empson and Dudley of the late reign, Graham and Burton." The same, part 2, in the epistle dedicatory, to sir Samuel Barnardiston, bart.

"Mr. Normansel and Mr. Trotman, the secondaries, deposed, that Graham and Burton were the prosecutors of lord Russell; that sir Dudly North had the books from them, and returned lord Russell's jury; that juries had usually been returned by the secondaries, and taken out of two, three or four wards; but this jury was taken out of above 19 wards.—— Mr. Trotman added, that Graham and Burton were also the prosecutors of alderman Cornish ——Sir Dudly North went on saying, that he impannelled the juries for the sessions when the lord Russell was tried; that he returned the best jury he could, without observing any ward; and drew this out of several wards, because they might be the more substantial men; ——that the juries before, were returned by the secondaries, but this being a very extraordinary business, he thought it requisite to take care of it himself." The same, part 2, p. 285-6-7.

"After this he [John Hambden, esq.] was brought to a trial for misdemeanor, and was convicted on the lord Howard's evidence. He pleaded Magna Charta, that a Salvo contenemento; but the Court fined him 40,000*l.* and to imprisonment till the fine was paid, and security for his good behaviour. The king made his choice of putting him in prison, and he was committed to the marshal's house in the King's Bench, where he was ten months. He offered several sums of money, and they answered, 'They had rather have him rot in prison than pay the fine.' After this, they put him in the Common prison, where he was kept ten or eleven months very close. Then, they contrived a writ, called a long writ, to reach his real and personal estate, whilst he was thus a prisoner. After this, he heard a new witness appeared, which was after the defeat of the duke of Monmouth. He was [then] sent close prisoner to the Tower, by the lord Sunderland's warrant; and put into such a room where he had no conveniency, and with two of the rudest warders in the Tower, to lie in the room with him. After seven or eight weeks, he was removed to Newgate, where he was kept close eleven weeks. His friends offered money for his pardon to some in power, who were the lord Jefferies and Mr. Petre; the sum was 6,000*l.* and that was effectual. It is not possible for a man to suffer more than he did. By the help of the money on condition he would plead guilty to his indictment, he was to come off. His friends advised him to it, because it could hurt none; there being none living of those called the council of six, but the lord Howard. Whereupon, pleading guilty, he was discharged; paying three or 400*l.* to Burton and Graham for the charge of his pardon." The same, part 2, p. 301.

ever was written in the world, tended to the subversion of our government; and that his approbation of the slaughter of Caligula, or the insurrections against Nero, were overt acts of conspiring the death of the king now reigning in England. The thing was fit to be brought only before such as sought to deserve the preferments unto which they were unworthily advanced, by doing such jobs, as would have been abhorred by any that had understood the

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"Monday, Jan. 20, 1689. Mr. Chrisly reported from the committee, to whom the bill for annulling the attainder of sir Thomas Armstrong was recommitted; some amendments to the bill; as also who were his prosecutors; and also what losses sir Thomas Armstrong's family had sustained by reason of the attainder; and thereupon it was resolved, "That sir Richard Holloway, (late recorder of Oxford, whose part in the dispatching of Stephen Colledge advanced him to this station, as this author elsewhere observes) sir Francis Withens, the executors of the late lord Jeffries and of the late justice Walcot, Mr. Graham and Mr. Burton do attend the House (of Commons) on Saturday morning next, to answer to such matters as are charged against them touching sir Thomas Armstrong." Then Mrs. Matthews, sir Thomas Armstrong's daughter, was called in, and examined what she knew of the prosecution against her father: and sir Robert Sawyer, then Attorney General, being named by her, as one of the prosecutors, after she was withdrawn, he was heard in his place to what was objected against him, and then he withdrew, and upon debate of the matter it was resolved, "That sir Robert Sawyer's name be put into the bill as one of the prosecutors of sir Thomas Armstrong. Resolved, That sir Robert Sawyer be expelled the House for the same."

"Saturday, Jan. 25, 1689. The House being acquainted, that according to their order, sir Francis Withens, sir Richard Holloway, Mr. Graham and Mr. Burton attended at the door, they were severally called in and examined touching the prosecution and proceedings against sir Thomas Armstrong. And also the executors of the late lord Jeffries, that were attending at the door, were likewise called in, and asked what they had to say why reparation should not be made out of the lord Jeffries estate to the said sir Thomas Armstrong's family. No persons appearing as executors to the late justice Walcot; the House was acquainted, that he died intestate, and had not left an estate sufficient to pay his debts. After the persons before mentioned were heard and withdrawn, Mr. Blaney was called in, who gave the House an account of the proceedings of the court of king's-bench, upon the awarding execution against sir Thomas Armstrong. And then the House proceeded upon the amendments made by the committee to the bill, for annulling the attainder of sir Thomas Armstrong: and after having inserted the name of sir Robert Sawyer, as a prosecutor, and resolved, "That the sum of 5,000*l.* should be paid by the judges and prosecutors to sir Thomas Armstrong's lady and children, as a recompence of the losses they had sustained by reason of his attainder; (the bill was recommitted,) &c. &c." The same, part 1, p. 225.

"The Commons (1680) did also assert the right of the people to petition for a parliament. And because some in their counter petitions had expressed their abhorrence of this practice, they voted these abhorrers to be betrayers of the liberties of the nation. They expelled one Withens out of their house for signing one of these, though he with great humility confessed his fault, and begged pardon for it. The merit of this soon raised him to be a judge; for indeed he had no other merit. They fell also on sir George Jeffries, a furious declaimer at the bar: but he was raised by that, as well as by this prosecution." Burnet's History of his own Times, vol. 1, p. 484.

"The addresses had now (1683) gone round England. The grand juries made after that high presentments against all that were esteemed whigs and non-conformists. Great pains were taken to find out more witnesses. Pardons and rewards were offered very freely. But none came in; which made it evident, that nothing was so well laid, or brought so near execution as the witnesses had deposed: otherwise people would have been crouding in for pardons. All people were apprehensive of very black designs, when they saw Jeffries made lord-chief justice, who was scandalously vicious, and was drunk every day; besides a drunkenness of fury in his temper, that looked like enthusiasm. He did not consider the decencies of his post: nor did he so much as affect to seem impartial as became a judge, but run out upon all occasions into declamations, that did not become the bar, much less the bench. He was not learned in his profession; and his eloquence, though viciously copious, yet was neither correct nor agreeable. Pemberton was turned out of the common pleas, and Jones was put in his place: And Jeffries had three judges joined with him in the king's-bench fit to sit by him." The same, part 1, p. 568.

"When Jeffries came to the king at Windsor soon after this trial (of sir Thomas Armstrong, 1681,) the king (C. 2.) took a ring of good value from his finger, and gave it him for these services. The ring upon that was called his blood stone. The king gave him one advice, which was somewhat extraordinary from a king to a judge; but it was not the less necessary to him: The king said, it was a hot summer, and he was going the circuit, he therefore desired he would not drink too much." The same, p. 580.

"Kirk, who had commanded long in Tangier, was become so savage by the neighbourhood of the Moors there, that after the battle (of Sedgemore, fought July 6, 1685,) he order-

principles or ends of governments; examined the history of the world, or seen that if it were in no case lawful for people to rise against a prince, there is not a prince in the world, that can have a lawful title to the crown he bears; the most part of our kings since William the Norman, were usurpers; or, which is worse, usurpation confers a just title.

These only having admitted an indictment, grounded wholly upon suppositions, innuendoes and intentionals, could hearken unto the lord Howard; who conjectures what I and others meant, who writ the letter into Scotland to whom it was directed, what were the contents and effects of it, though he would not speak precisely to any of those points.

These only could think him a credible witness, when they had heard him swear himself perjured, and the contents of his deposition were, by his own assertions, as in the presence of God, proved to be false by nine irreproachable witnesses.

These only, could suffer a jury to suppose that an evidence can be grounded upon an opi-

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ed several of the prisoners to be hanged at Taunton, without so much as the form of law, he and his company looking on from an entertainment they were at. At every new health another prisoner was hanged up. And they were so brutal, that observing the shaking of the legs of those whom they hanged, it was said among them, they were dancing; and upon that music was called for. This was so illegal, and so inhuman, that it might have been expected that some notice would have been taken of it. But Kirk was only chid for it: and it is said, that he had a particular order for some military executions, so that he could only be chid for the maner of it.——But, as if this had been nothing, Jeffries was sent the western circuit to try the prisoners, He was perpetually either drunk, or in a rage, liker a fury than the zeal of a judge. He required the prisoners to plead guilty, and in that case he gave them some hope of favour, if they gave him no trouble; otherwise he told them he would execute the letter of the law upon them in its utmost severity. This made many plead guilty, who had a great defence in law. But he shewed no mercy. He ordered a great many to be hanged up immediately, without allowing them a minute's time to say their prayers. He hanged, in several places, about 600 persons. The greatest part of these were of the meanest sort, and of no distinction. The impieties with which he treated them, and his behaviour towards some of the nobility and gentry that were well affected, but came and pleaded in favour of some prisoners, would have amazed one if done by a bashaw in Turkey. England had never known any thing like it. The instances are too many to be reckoned up.——But that which brought all his excesses to be imputed to the king himself, and to the orders given by him, was, that the king had a particular account of all his proceedings writ to him every day; and he took pleasure to relate them in the drawing room to foreign ministers and at his table, calling it Jeffries's campaign: speaking of all he had done in a stile, that neither became the majesty nor the mercifulness of a great prince, &c. &c. &c." The same, p. 648.

"As soon as it was known at London, that the king (James 2.) was gone, the apprentices and the rabble, who had been a little quieted when they saw a treaty on foot between the king and the prince, (of Orange,) now broke out again upon all suspected houses, where they believed there were either priests or papists They made great havock of many places, not sparing the houses of ambassadors. But none were killed, no houses burnt, nor were any robberies committed. Never was so much fury seen under so much management. Jeffries, finding the king was gone, saw what reason he had to look to himself: and, apprehending that he was now exposed to the rage of the people, whom he had provoked with so particular a brutality, he had disguised himself to make his escape. But he fell into the hands of some who knew him. He was insulted by them with as much scorn and rudeness as they could invent: and, after many hours tossing him about, he was carried to the lord-mayor, (sir John Chapman, knt.) whom they charged to commit him to the Tower, which the lord Lucas had then seized, and in it had declared for the prince. The lord-mayor was so struck with the terror of this rude populace, and with the disgrace of a man who had made all people tremble before him, that he fell into fits upon it, of which he died soon after." The same, p. 797.

"During these irruptions of the mob, chancellor Jeffries, disguised in a seaman's habit, in order to escape in a vessel freighted for Hamburgh, was discovered by a clerk in chancery, that accidentally passed by, as he was looking out of the window of the house where he had concealed himself. He was immediately seized by the mob, and, after many indignities put upon him, carried before the lord-mayor, who declined meddling with him. But the chancellor seeing himself in the hands of an enraged mob, which threatened to tear him in pieces, desired that he might be sent to the Tower, which at last was granted him, not as a favour, but in hopes of seeing him shortly conducted from thence to the gallows. It is pretended, he offered to discover many secrets, and for that reason, was kept some time in prison, till the affairs of government should be settled. But he died in that interval, by the blows he had received, according to some; drinking spirituous liquors, according to others; and, as some pretend, of the stone. Never man had better deserved a public punishment, as an atonement for all the mischiefs done to his country, and for all the blood spilt by his means." Rapin's Hist. of England.

nion of a similitude in writing, when they know it is none; that a book was written with an intention to stir up the people, when they hardly saw the fiftieth part of it, and would not suffer the tenth of that to be read; that papers, written perhaps twenty or thirty years ago, were intended in prosecution of designs laid within ten months.

These only could receive an indictment, in which the king's title of defender of the faith was omitted; refuse a copy, when it was demanded, and the st. 46 Ed. 3, produced, whereby it is enacted, that it should, in all cases, be allowed unto every man, lest the irreparable errors of it should be discovered. These only could give credit unto a grand jury, who upon their oaths, presented a bill, wherein I am said to have traitorously, on the 30th of June, and many other days, both before and after, conspired with many other false traitors, to them unknown; whereas I was then, and have been ever since, a close prisoner in the Tower, and it is morally impossible for any man to know I did conspire, unless they did know with whom.

They only could pach [patch] up an evidence consisting of two parts, as the lord Howard's deposition, and the papers upon the similitude of a hand, when they knew both of them to be void in law; and tack them together, when it was apparent, they neither had nor could have any relation unto each other.

It was a work for them only impudently and without hearing, to over-rule many most important points of law; by their word to deprive the whole English nation of their right of being tried by freeholders, which is a general and ancient, as any part of our laws; to make discourses at a private meeting, imperfectly, variously and to their own knowledge falsely reported, by a man of a most profligate life and reputation, to pass for a conspiracy; to oblige a prisoner falsely to acknowledge he had conspired to levy war or contrary to the judg-

been true) to be treason, as imagining the death of the king, though the laws, and the most reverenced expositors of them, declare that it is not so.

They only could take upon them by various improbable, absurd and false constructions, to make acts no-ways comprehended within the words or meaning of the stat. 25 Ed. 3, to pass for treason, when they knew themselves, by the same, to be forbidden to make any construction at all; and neither to suffer the statute to be read, counsel heard, nor the points of law to be saved unto me.

None but such as they would have suffered Mr. Solicitor, by a long painted speech, to have misrepeated the evidence on both sides to mislead the jury; to have represented the lord Howard's frequent attestations of God that he knew of no plot, believed that was none, and took that which was spoken of, to be an invention of the priests, only as willingness to confess it, and his many perjuries, as a mark of the truth of what he had sworn: and by such constructions as were absurd impossible and false, to drive them headlong into a verdict upon no evidence, in matter of which they were utterly incapable of judging, if the law had referred unto them, and who were so compacted and composed, as not to be capable of judging any matter relating unto the meanest thief.

If any others than this had been upon the bench, I might have been heard, when I offered to answer unto these fallacies, and have unravelled all his frauds; though such a work could hardly be expected from a man of my education, and in an age, that had much abated his vigour and memory. If this was denied the points of law might have been left to be found specially; but I was in all things overborne by the fury of the chief justice. He did probably fear he should not be taken for Cesar's friend, if he did let this man go. He was to deserve his otherwise undeserved preferment. To this end, he made a speech of about a hour and a quarter, so confused, that I can give no other account of it than that, as he had been long observed to excel in the laudable faculty of misleading juries, he did exercise it with more confidence upon the bench, than ever he had done at the bar; declared treasons that had been hitherto unknown, and that the jury was obliged to take that to be law, which he judged to be so; misrepresented the evidence more than the solicitor had done; and as a rule which they were to follow, asserted, that if one man swore, that such a one said, he would with his knife kill the king, and another, that he had of him bought that knife, it was sufficient evidence to convict any man.

It may as easily be guessed, what verdict I expected from an ignorant, sordid and packed jury*, upon such a direction, as what security

* "Mr. Richard Wynne declared, That he was Solicitor to colonel Sidney; that the Colonel excepted against several of the jury, to some as not being freeholders, and others, as being in the king's service, and receiving wages from his majesty. That presently after the trial, the lord chief justice sent him prisoner to the King's-bench, for saying the jury were a loggerhead jury; and that they had not evidence sufficient to find such a verdict; or found a verdict contrary to evidence.—Mr. Wynne said this to Angier, the foreman of that murdering jury, and to Glisby, another of the three carpenters, which were upon that jury, and to another of their brethren near the king's bench court; whereupon they went to lay hold on Mr. Wynne; at which instant Mr. Forth the king's joiner coming, interposed; upon which Angier said, Mr. Forth, will you assist this man? He says, colonel Sidney's jury was a loggerhead jury: to which Mr. Forth answered, I have nothing

any man in England can have for his life and estate, when such stuff can be made to pass for law: but I was still overborne, and could not be heard, when I endeavoured to bring the chief justice to reflect upon his own extravagancies.

Before the trial, I was credibly informed, that his lordship had so far humbled himself, as to advise with the king's counsel of the ways of compassing my death; and, that a paper, containing the result of that consultation, had been seen upon Mr. Attorney's table. Since that time I have been told by persons of unblemished reputation, that, not satisfied with the directions given in public, he had been farther pleased, when he retired upon pretence of taking a glass of sack, to follow the jury and give them more particular instructions.

Upon the first part, I was advised to conjure his lordship, in the presence of God, to declare, whether he had not consulted as aforesaid; but the testimony his lordship gave upon my trial of the tenderness of his conscience, and how far he valued the religion of his own, and the king's oath, persuaded me to be silent.

When the jury brought in their verdict, I desired to examine them 'seriatim,' whether every one of them had found me guilty before it was recorded; and prepared to ask them particularly, whether they had found me guilty of compassing the king's death? 2dly, Of levying war against the king? 3dly, If they found me guilty of any treason, within the statute 25 of Ed. 3.? 4thly, If they found any treason proved against me by two witnesses? And this I did, that I might not be deprived of the benefit of giving my exceptions; as I have heard the lord Russell had lost it, by not having moved it before the verdict was recorded, but the chief justice would not hear me.

The irregularity of these proceedings (that I may not use a harder word) obliged me, on the 25th of November, to present a petition unto his majesty, shewing,

"That your petitioner, after a long and close imprisonment, was on the 17th of this month, brought with a guard of soldiers into the palace-yard, upon a habeas corpus, directed to the lieutenant of the Tower, before any indictment had been found against him; that whilst he was there detained, a bill was exhibited and found; whereupon he was immediately carried to the King's-bench, and there arraigned; in this surprise, he desired a copy of the indictment, leave to make his exceptions, or to put in a special plea, ready engrossed, which was also rejected without reading; and being threatened, that if he did not immediately plead guilty, or not guilty, a judgment of high treason should be entered, he was forced, contrary to law, as he supposed, to come to a general issue, in pleading not guilty.

"November 21, he was brought to his trial, and the indictment being perplexed and confused, so as neither he, nor any one of his friends that heard it, could fully comprehend the scope of it, he was utterly unprovided of all the helps that the law alloweth unto every man for his defence; whereupon he did again desire a copy, and produced an authentic copy of the statute 46 Ed. 3, whereby it is enacted that every man shall have a copy of any record that toucheth him in any manner, as well that which is against the king as any other person; but could neither obtain a copy of his indictment, nor that statute should be read.

"The jury by which he was to be tried, was not, as he is informed, summoned, by the bailiffs of the several hundreds in the usual and legal manner, but names were agreed upon by Graham, Burton, and the under-sheriff, and direction given to the bailiff to summon them; and being also chosen, the copy of the pannel was of no use unto him.

"When they came to be called, he excepted against some for being your majesty's servants, which he did hope should not have been returned, when he was prosecuted by your majesty, with many others for not being freeholders, which exceptions he thinks are good in law: others were lewd and infamous persons, not be fit to be of any jury, but was over-ruled by lord chief justice; and your petitioner forced to challenge them peremptorily, whom he found to be picked, as most suitable unto their intentions, who sought his ruin, whereby he lost the benefit allowed by the law, of making his exception, and was forced to admit of mechanic persons, utterly unable to judge of such matters as were to be brought before them.

"The jury being sworn, no witness was produced, who fixed any thing beyond hearsay upon your petitioner, except the lord Howard; and some that swore the papers said to be found in his house and offered as a second witness, were written in a hand by your petitioner. Your petitioner produced 10 witnesses, the most of them men of eminent quality, the others of unblemished fame, to shew the lord Howard's testimony was inconsistent with what he had, as in the presence of God, affirmed unto many of them, as he swore in the trial of lord Russell, under the same religious obligation of an oath, as if it had been legally administered. Your petitioner did endeavour farther to shew the incongruity of his testimony, he being guilty of many crimes, which he did not pretend had any knowledge of; and having no other hope of pardon, than by the drudgery of swearing against him, deserved not to be believed; and that similitude of hands could not be evidence, as was declared

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to do with the jury, but Glisby knows, that I know he is a loggerhead. Of this, they complained to Jefferies, who committed Mr. Wynn and Mr. Forth to the king's bench. It cost Mr. Forth about fifty pounds, whereof Burton had twenty-four; and he being a Protestant joiner, scaped well out of their hands, as times then went; especially with that trade." A Display of Tyranny, etc. part 2. p. 306.

by the lord chief justice Keeling, and the whole court in the lady Car's cause, so as no evidence at all remained against him: that whosoever writ those papers, they were but a small part of a polemic discourse, in answer to a book written above 30 years ago, upon a general proposition, applied to no time, or any particular case; that it was impossible to judge of any part of it, unless the whole did appear, which did not; that the sense of such as were produced, could not be comprehended, unless the whole were read, which was denied; that the ink and paper shewed them to be written many years ago; and the lord Howard knowing nothing of them, they could have no concurrence with what your petitioner was said to have designed with him and others.

"That the confusion and errors in writing it, shewed that they had never so much as been reviewed, and written in a hand that no man could read; were neither fit for the press, nor could be in some years, though the writer of them did intend it, which did not appear; that being only the present study and private thoughts of a man, for the exercise of his own understanding in his study, never shewed unto any, nor applied unto a particular case, could not fall under the statute 25 Ed. 3, which takes cognizance of no such matters, being reserved thereby to the parliament, as declared in the *proviso*, which he did desire might be read, but was refused.

"Eight or nine important points of law did hereupon emerge, upon which your petitioner, knowing his own weakness, did desire his counsel might be heard, or reserved to be found specially, but was over-ruled by the violence of the lord chief justice; and your petitioner so frequently interrupted, the whole method of his defence was broken, and he not suffered to say the tenth part of what he could have alledged in his defence, and the jury carried into a verdict that they did not know nor understand.

"For as much as no man that is oppressed in England can have any relief unless it be from your majesty, your petitioner humbly prays, the premises considered, your majesty will be pleased to admit him into your presence; and if he does not shew, that it is for your majesty's honour and interest to preserve him from the said oppression, he will not complain, though he be left to be destroyed."

But he was pleased to refer me to the same judges of whom I complained.

November 26, I was again brought to the bar, and asked by the chief justice, what reason I could alledge why judgment of death should not be pronounced against me? My first answer was, that I had had no trial, the jury not having been composed of freeholders, as the law required. The chief justice said the question had been decided at the lord Russell's trial. I replied, the question had then been concerning a corporation, this was upon an indictment laid in a county. He said, that was nothing, the decision had been general. I desired to know, whether any precedent could be alledged, of an Englishman tried by others than by freeholders; and that if this rule were broken, any man might be tried by his own grooms, or a jury made up of porters, carmen, or scavengers, thereupon desired counsel to argue it, which was denied.

I then desired the indictment might be again read, which was granted, but was not suffered to peruse it: this I did also desire, upon an information, that the bill had been mended since it came into the court: and that by a statute of Henry the sixth, every indictment was made void, wherein any word or syllable had been added or changed; but not being suffered to see it, I could not tell what additions or alterations had been made.

I then pleaded, that by the stat. 13 Car. 2. it was treason to deprive the king of any of his titles; and that Defensor Fidei not being in the indictment it was void, and desired counsel to argue it; but though the chief justice seemed to be surprised at the objection, he overruled it, and would not hear counsel.

I then moved for a new trial, by reason of the many miscarriages that had been in this, which he was pleased to call a trial, though I took it to be none. I then pleaded, that trials being instituted for the execution of justice, through the discovery of truth, that ought to be taken for none, wherein abuses had been committed to the overthrow of justice; and that if I might be patiently heard, I thought I could make it appear to have been so in this my case: and went about to shew reasons for what I said. Amongst others I shewed, that on the 7th of November, I had been brought to Westminster, by an habeas corpus granted the day before, when as yet no bill was exhibited against me, and my prosecutors could not know it would be found, unless they had unduly corresponded with the grand jury. 2dly, that a copy of the indictment, the benefit of making my exceptions against it, or putting in a special plea, which the law doth allow, and the help of counsel to frame them, or either of them, had been denied unto me. 3rdly, The special plea which I presented, ready engrossed, to prevent the mischiefs that would follow upon my general answer unto a long, confused, imperfect, unintelligible indictment, had been rejected, and thereby forced to come to a general issue in pleading not guilty. Hereupon justice Withins, being (as seemed to me) very drunk, told me, it was false; and the chief justice said, he had not rejected my plea, but told me the danger of putting it in, because the king's counsel would demur unto it, and I could not be suffered to plead hereafter. Hereupon I replied, that having lived above threescore years,* I had never received or deserved such language, for that I had never asserted any thing that was

* Dalrymple, with a marvellous, though in him very common, ostentation of error, says (Memoirs, Part 1, Book 1, p. 34) that Sidney was at this time fifty nine years of age

false; but as to this particular, all that were present could witness my said plea had been rejected: and the condition afterwards imposed, that I should not be admitted to put in any other plea if that came to be overruled, was not according unto law; but I being ignorant of it, and denied the help of a counsel, had been forced to submit, which I should not have done, if I had been then as well informed as I am now, that I find myself circumvented by the fraud of those, who by their oaths ought to have preserved me. 4thly, That being brought unto a trial, Nov. 21, I had again desired a copy of the indictment, alleged precedents, produced an authentic copy of the stat. 46 Ed. 3 enacting, that all men, in all cases, as well against the king as others, should have copies of any records in which they were concerned; but could neither obtain it, nor that the statute should be read. 5thly, I am probably informed, and if time be allowed, doubt not but I shall prove it, that the bailiffs of the hundreds of Middlesex, had not the liberty of summoning the freeholders according unto law, but such only (whether freeholders or not) whose names were agreed by Graham and Burton, with the under-sheriff; of whom many were not summoned, when the copy of the pannell was sent unto me, and some of them not at all. 6thly, Many of the king's servants now in pay, from whom impartial justice could not be expected whilst I was prosecuted at the king's suit, were returned upon the pannell, and many who were not freeholders, and some lewd and infamous persons, who deserve not to be of any jury; all my lawful exceptions rejected; the counsel prayed to argue the points of law arising upon the evidence refused: whereby I had not only been obliged to admit of those whom I knew to be chosen to destroy me, and forced to answer before a jury composed of mechanic persons, utterly incapable of judging such matters as came before them, but deprived of all lawful defence.

I had many other things to offer, concerning the uncertainty and invalidity of the lord Howard's testimony. The utter impossibility of bringing papers written many years ago, into a concurrence with a new plot, of which the plotters knew nothing. I desired that the duke of Monmouth, who now appeared, might be asked, whether he ever heard of them, as he must have done, if they had been designed to stir up the people, in order unto counsels taken with him. The weakness of an evidence taken from a similitude of hands; the unreasonableness of judging of a few sheets of a treatise, without seeing the whole; the impossibility of bringing the matters laid unto my charge, within the stat. of 25 Ed. 3, though they had been proved; the injustice of breaking the method set for my defence; the fraud of the solicitor's representations; the irregularity and mistakes of his lordship's direction; the direct incapacity laid upon that court to judge of constructive treasons; the manifold errors in construing this to be treason, there being nothing to lead them unto it, but seven or eight suppositions, of which every one was false; and resolution taken not to hear any point of law argued, lest they should be thereby led unto truth: but nothing could be heard.

I had also reason to move for an arrest of judgment, that though I had granted what had been said by lord Howard to be true, consulting to levy war can amount only unto words, and words only are not to be treason, according to Cook and Hales, and Pine's case 4 Car. pr. 1.

Consulting to levy war is no overt act of compassing the king's death, as is said expressly by Cook and Hales; assembling to consult, can amount unto no more than to consult, and, legally considered, can be no more than consulting, it being impossible in law or nature to consult without assembling, that is, coming together, so as assembling to consult is no more than bare consulting, that is, bare words.

That consulting, and sending into Scotland, if it had been true, were no more than to consult with those that were to come; that all this being testified only by the lord Howard, had been invalid, though their credit had been good; as appears by Blake his law, and the popish lords now in the Tower, who are thought to hold their lives only upon the weakness of one witness, though there were many concurrent circumstances. Whitebread's trial was put off for the same reasons: and beside that hath been already said of the papers, I ought to have added the absurdity of pretending, that such as had been written many years ago, not perfected, nor to be perfected, in a long time, perhaps never, and never shewn to any man living, should be intended to stir up the people; whereupon a new trial, an arrest of judgment, should be given; but I could not be heard: and though I did attest God and man, that I had not been sufficiently heard, the chief justice with his usual precipitation pronounced judgment of death against me as a traitor.

Some that were present, affirm, that he acknowledged the late pretended plot did not affect me: but I confess I did not observe that, and think myself obliged unto him in nothing, but that he seemed to lay very much weight upon the old cause, and my engagement in it, with which I am so well satisfied as contentedly to dye for it.

When I heard the judgment, to the best of my remembrance I said these words:

"Why then, Oh Lord, sanctify, I beseech thee, these my sufferings unto me; sanctify me through my sufferings, sanctify me through thy truth; thy word is truth; impute not my blood unto this nation; impute it not unto the great city through which I shall be led to the place of death; let not my soul cry though it lay under the altar; make no inquisition for it; or, if innocent blood must be expiated, let thy vengeance fall only upon the head of those, who knowingly and maliciously persecute me for righteousness sake."

The chief justice then speaking, as if I had

been a distempered man, I held out my arm, and desired any that were present to feel my pulse, and whether any man could be more free from emotion; and I do profess, that so far as I do know and did then feel myself, I was never in a more quiet temper; glory and thanks be unto God for ever, who had filled me me with comforts, and so upholds me, that having, as I hope, through Christ vanquished sin, he doth preserve me from the fears of death.

The chief justice having performed this exploit, is said to have bragged unto the king, that no man in his place had ever rendered unto any king of England such services as he had done, in making it to pass for law, that any man might be now tried by a jury not consisting of freeholders; and that one witness, with any concurrent circumstance (as that of the buying the knife), was sufficient to convict him. In this he seems to have spoken very modestly; for he might truly have said, that he had over-ruled eight or ten very important points of law, and decided them without hearing; whereby the law itself was made a snare, which no man could avoid, nor have any security for his life or fortune, if one vile wretch could be found to swear against him such circumstances as he required. Nevertheless we all know, that the like had been done in former times. In the days of Richard 2, the nation was brought into such a condition, through the perversion of the law, that no man knew what to say or do for fear of treason, as is expressed in the stat. 1 Hen. 4, and were thereby driven upon the most violent remedies. God only knows what will be the issue of the like practice in these our days. Perhaps he will in his mercy speedily visit his afflicted people. I die in the faith that he will do it, though I know not the time or ways; and am so much the more confident he will do it, that his cause, and his people is more concerned now than it was in former time. The lust of one man and his favourites was then only to be set up in the exercise of arbitrary power over persons and states; but now, the tyranny over consciences is principally affected*, and the civil powers are stretched unto this exorbitant height for the establishment of popery. I believe that the people of God in England have, in these late years, generally grown faint. Some, through fear, have de-

* "There has now for divers years, a design been carried on, to change the lawful government of England into an absolute tyranny, and to convert the established protestant religion into downright popery: than both which, nothing can be more destructive or contrary to the interest and happiness, to the constitution and being of the king and kingdom.—For if, first, we consider the state, the kings of England rule not upon the same terms with those of our neighbour nations, who, having by force or by address usurped that due share which their people had in the government, are now for some ages in possession of an arbitrary power (which yet no prescription can make legal) and exercise it over their persons and estates in a most tyrannical manner. But here the subjects retain their proportion in the legislature; the very meanest commoner of England is represented in parliament, and is a party to those laws by which the prince is sworn to govern himself and his people. No money is to be levied but by the common consent. No man is for life, limb, goods, or liberty at the sovereign's discretion: but we have the same right (modestly understood) in our propriety that the prince hath in his regality; and in all cases where the king is concerned, we have our just remedy as against any private person of the neighbourhood, in the courts of Westminster-hall or in the high court of parliament. His very prerogative is no more than what the law has determined. His broad seal, which is the legitimate stamp of his pleasure, yet is no longer current, than upon the trial it is found to be legal. He cannot commit any person by his particular warrant. He cannot himself be witness in any cause: the balance of public justice being so delicate, not the hand only but even the breath of the prince would turn the scale. Nothing is left to the king's will, but all is subjected to his authority: by which means it follows that he can do no wrong, nor can he receive wrong; and a king of England, keeping to these measures, may without arrogance be said to remain the only intelligent ruler over a rational people. In recompence therefore, and acknowledgment of so good a government under his influence, his person is most sacred and inviolable; and whatsoever excesses are committed against so high a trust, nothing of them is imputed to him, as being free from the necessity or temptation, but his ministers only are accountable for all, and must answer it at their perils. He hath a vast revenue constantly arising from the hearth of the housholder, the sweat of the labourer, the rent of the farmer, the industry of the merchant, and consequently out of the estate of the gentleman: a large competence to defray the ordinary expence of the crown, and maintain its lustre. And if any extraordinary occasion happen, or be but with any probable decency pretended, the whole land at whatsoever season of the year does yield him a plentiful harvest. So forward are his people's affections to give even to superfluity, that a foreigner (or Englishman that hath been long abroad) would think they could neither will nor chuse, but that the asking a supply, were a mere formality, it is so readily granted. He is the fountain of all honours, and has moreover the distribution of so many profitable offices of the houshold, of the revenue, of state, of law, of religion, of the navy (and, since his present majesty's time of the army) that it seems as if the nation could scarce furnish honest men enough to supply all those employments. So that the kings of England are in nothing inferior to other princes, save in being more abridged from injuring their own subjects: but have as large a field as any of external fe-

flected from the integrity of their principles. Some have too deeply plunged themselves in worldly cares, and, so as they might enjoy their trades and wealth, have less regarded the treasure that is laid up in heaven. But I think there are very many who have kept their garments unspotted; and hope that God will deliver them * and the nation for their sakes. God will not suffer this land, where the gospel hath of late flourished more than in any part of the world, to become a slave of the world; he will not suffer it to be made a land of graven images: he will stir up witnesses of the truth, and, in his own time, spirit his people to stand up for his cause, and deliver them. I lived in this belief, and am now about to die in it. I know my Redeemer lives; and, as he hath in a great measure upheld me in the day of my calamity, hope that he will still uphold me by his spirit in this last moment, and giving me grace to glorify him in my death, receive me into the glory prepared for those that fear him, when my body shall be dissolved. Amen.†

I have already (pp. 492, 517.) inserted bishop Burnet's account of Sidney's Christianity. Sir John Dalrymple, however, (Memoirs, part 1, book 1, p. 21, 4to edition of 1771) takes upon him to assert that Sidney was a 'determined 'Deist.'

With respect to what Sidney says, (see p. 901), that the ink shewed the writings had been done many, and perhaps 20 or 30 years, it is observed in the Biographia Britannica, that from names mentioned in Sidney's book it is undeniable that some parts of it at least had not been written 20 years. As for instance, "Old Audley, Dog Smith, Bishop Duppa, Brownloe, Child, Dashwood, Fox, &c. are to be esteemed fathers of the people of England." And this other passage, where he names "Hide, Arlington, Danby, their graces of Cleveland and Portsmouth, Sunderland, Jenkins, and Chiffinch;" immediately after mentioning the "bawds, whores, thieves, buffoons, parasites, and such vile wretches are naturally mercenary, that had too much power at Whitehall."

licity, wherein to exercise their own virtue, and so reward and encourage it in others. In short, there is nothing that comes nearer in government to the divine perfection, than where the monarch, as with us, enjoys a capacity of doing all the good imaginable to mankind, under a disability to all that is evil.—And as we are thus happy in the constitution of our state, so are we yet more blessed in that of our church; being free from that Romish yoke, which so great a part of Christendom do yet draw and labour under. That Popery is such a thing as cannot, but for want of a word to express it, be called a religion: nor is it to be mentioned with that civility which is otherwise decent to be used, in speaking of the differences of human opinion about divine matters. Were it either open Judaism, or plain Turkery, or honest Paganism, there is yet a certain *Bona fides* in the most extravagant belief, and the sincerity of an erroneous profession may render it more pardonable: but this is a compound of all the three, an extract of whatsoever is most ridiculous and impious in them, incorporated with more peculiar absurdities of its own, in which those were deficient; and all this deliberately contrived, knowingly carried on by the bold imposture of priests under the name of Christianity. The wisdom of this fifth religion, this last and insolentest attempt upon the credulity of mankind, seems to me (though not ignorant otherwise of the times, degrees, and methods of its progress) principally to have consisted in their owning the scriptures to be the word of God, and the rule of faith and manners, but in prohibiting at the same time their common use, or the reading of them in public churches but in a Latin translation to the vulgar; there being no better or more rational way to frustrate the very design of the great institutor of Christianity, who first planted it by the extraordinary gift of tongues, than to forbid the use even of the ordinary languages. For having thus a book which is universally avowed to be of divine authority, but sequestering it only into such hands as were intrusted in the cheat, they had the opportunity to vitiate, suppress, or interpret to their own profit those records by which the poor people hold their salvation. And this necessary point being once gained, there was thenceforward nothing so monstrous to reason, so abhorring from morality, or so contrary to scripture, which they might not in prudence adventure on, etc. etc. etc." An Account of the Growth of Popery and Arbitrary Government in England. More particularly from the long prorogation of Nov. 1675, ending Feb. 15, 1676, till the last meeting of parliament, July 16, 1677. Amsterdam, printed in the year 1677, in quarto. [By Andrew Marvell, "Who died shortly after, not without strong suspicions of being poisoned."]

Of James 1, Charles 1, Charles 2, James 2, their evil deeds and sinnings against their people, see an admirable recapitulation, in that master tract intitled "A short history of standing armies in England," by that spirited excellent English gentleman John Trenchard.

* In his bounty he did deliver them, and soon too, at the most noble, most happy revolution.

† The reader will find a difficulty in understanding some words and passages in this Apology, which, it is not improbable, was dictated to a Frenchman, Joseph Ducas, the same who gave evidence on the trial.

REPORT MADE TO THE HOUSE OF LORDS, ON THE 20TH OF DECEMBER 1689, FROM THE COMMITTEE FOR INSPECTIONS OF EXAMINATIONS, concerning the Murders of Lord RUSSELL, Colonel SYDNEY, Sir T. ARMSTRONG, and Mr. CORNISH: the Advisers of Quo Warranto, and the Advisers of the Dispensing Power. [From the Lords' Journals.]

December 20, 1689.

THE earl of Stamford reported, from the Lords Committees appointed to consider who were the Advisers and Prosecutors of the Murders of the lord Russell, colonel Sidney, sir Thomas Armstrong, and Mr Cornish; and who were the Advisers of issuing out of writs of Quo Warrantos against Corporations, and who were their Regulators; and also who were the public Assertors of the dispensing power.

In pursuance of which, these Depositions were read, as followeth:

The EXAMINATION of Doctor JOHN TILLOTSON, Dean of St. Paul's, taken the 18th of November, 1689.

To the question, 'Whether the doctor wrote 'a letter to the lord Russell, June 20th, 1683?' This examinant, by his answer, saith, That indeed he did write such a letter, the day before the lord Russell died.—That he did shew the letter to the lord Hallifax, that evening he wrote it. And that he wrote it merely of himself.

"But this Examinant saith, That he did not publish it.—And it was much against his will that it was published. And he doth not know by what order it was published.

"This Examinant saith, That Dr. Burnet, the present bishop of Salisbury, coming from the lord Russell, told him, 'That he believed that 'he had brought him to a willingness to declare 'his satisfaction in that point which the letter relates to; and desired this examinant to go to the 'lord Hallifax, to acquaint him with it, that his 'lordship might mitigate the thing to the king, 'and so be a means to save the lord Russell's 'life.'

"This Examinant saith, That the lord Hallifax told him, 'he would do it;' and the next day said, 'he had done it, and that the king 'seemed to be more moved with it than by 'any thing else that had been said before.'

"On Thursday, after, this Examinant saith, he waited on the lord Russell; and told him, 'that he was very glad to hear his lordship was 'satisfied as to that point, hoping it would improve to his advantage.' But his lordship told him, 'he was not so clearly convinced in that 'matter.' This Examinant saith, That he in reply told him, 'he was very sorry for it; because the message had been carried to the king 'that he was convinced of it, and would declare 'it at his death;' for so he had been informed His lordship said: 'That Dr. Burnet had discoursed much with him about it, and that he 'was very willing to be convinced; but yet he 'could not say he absolutely was so.'

"This Examinant saith, That he was much troubled at this, for his own sake, as well as his lordship's, because that he had been the occasion of sending a message to the king, which seemed to contradict him.

"Hereupon this Examinant saith, That the next day, which was Friday, he wrote the above mentioned letter, which he carried along with him to his lordship: fearing that, being so near the time of his suffering, his relations would be with him, and so he might not have the opportunity of speaking with him himself; but when this examinant came, he found there none with him but his lady. He told his lordship what he intended, 'that, being his time was so very short, 'he rather chose to give him that letter, than to 'trouble him with a long discourse:' his lordship received it, and, rising up, went into his inner room; and staying there some time, when he returned he told him, 'that he had read the 'letter, and was willing to be convinced, but he 'could not say he was so;' and withal, he told this examinant, 'It was not then a time to trouble himself with politics;' but said, 'that though 'he was in error, yet, being willing to be convinced, he hoped God would forgive him.' And this examinant saith, he made answer, 'That 'he hoped so too.' After a little further discourse, of that matter, this examinant saith, he told his lordship, 'he would trouble him 'about it no more;' nor did he; but, after his lordship came out of the room, he gave this examinant his letter again.

"This Examinant saith, That, after he left his lordship, he went to the lord Hallifax, whom he told, 'he was sorry he had begged his lordship's favour to employ himself on that message, 'not finding the lord Russell so fully satisfied as 'Dr. Burnet believed he was, though, he saith, 'he had endeavoured all he could to give his 'lordship satisfaction in the matter, and had 'written a letter to that purpose, which he delivered into his own hands himself.' Thereupon, this examinant saith, he shewed that letter to the lord Hallifax; and just as he began to read it, one of his servants came in, and told him, 'that a foreign or Spanish ambassador 'was coming in;' therefore this examinant saith, he told his lordship, 'he must leave the 'letter with him.'

"The next was the day of the lord Russell's

suffering; and this examinant saith, he attended him on the scaffold, and did not speak with the lord Hallifax till some days after. He saith, the reason why he applied himself to the lord Hallifax upon this occasion was, because he believed his lordship would do the lord Russell all the good he could.

"This Examinant saith, That the day after the lord Russell died, he was commanded to appear at the cabinet council; which he did; and there the king, the duke of York, the lord keeper North, the duke of Ormond, the lord Hallifax, the lord Rochester, and sir Leoline Jenkins, were present.

"This Examinant saith, There the king asked him, 'whether he had any hand in the 'paper which was published in the lord Russell's name?' To which he answered, 'he 'had not;' after which, the king seemed to be satisfied.

"This Examinant saith, That Mr. Roger L'Estrange came the next day to him; and told him, 'he was ordered to shew him a letter, and 'to ask him, whether it was his or no?'

"This Examinant saith. That he gave no copy, it is true he kept a copy, but it was in short hand): but when Mr. L'Estrange shewed him a letter, he desired him to read it; and when he had, this examinant saith he told him, (excepting two or three words which he shewed him to alter) 'it was his.'

"This Examinant saith, That he believes it was L'Estrange's hand; and that he told him, 'he was very sorry it was to be published; 'and if it were in his power, it should not.'

"Some day in the week after, this examinant saith, the first time he spake with the lord Hallifax, he asked him, How his letter came to 'be published?' To which he was answered, 'That, upon the coming out of the lord Russell's paper, there was such a storm raised 'in the court against Dr. Burnet and this examinant, that his lordship in kindness to the latter 'shewed the king his letter; and it passing from 'several hands, it became out of his power to retrieve it.' The lord Hallifax said, 'that he had 'this reason to believe he left it in the king's 'hands, because the duke of York that Sunday '(being the day after the lord Russell died), at 'the cabinet council, spoke of this letter.' But this examinant saith, That he knows nothing of the publishing of this letter, nor by whom; nor did he speak to the lord Hallifax, between the time of the delivery of the letter, and that of the publishing of it.

"This Examinant saith, That the lord Hallifax shewed a very compassionate concern for the lord Russell, and all the readiness to serve him that could be wished.

"And this Examinant further saith, that the lord Russell desired him to give his thanks to the lord Hallifax, for his humanity and kindness to him; and it was occasioned by his telling the lord Russell of the lord Hallifax's being so ready to carry that message to the king that he had from doctor Burnet."

The EXAMINATION of JOHN HAMPDEN* esq. taken the 18th of November, 1689.

"This Examinant saith, That his case is so very much twisted with those noble persons after whose blood and murder their lordships of this committee do now so strictly enquire, that he

* On the 13th of November, the Lords sent down the following Message to the Commons: 'Mr. Speaker, we are commanded by the Lords to acquaint this honourable House with this Message, That a Committee being appointed to examine, who were the Advisers and Prosecutors of the Murders of the lord Russell, colonel Sidney, sir Thomas Armstrong, Mr. Cornish, and others; and, who were the Advisers of issuing out of writs of Quo Warrantos against Corporations; and, who were the Regulators; and also, who were the public Asserters of the Dispensing Power, that this House be desired, that Mr. Serjeant Trenchard, and John Hampden, esq. and such other members of this House, as can inform the Lords of the said committee, about those matters, may have leave to appear, when desired, to declare their knowledge therein."

Upon which the following debate ensued:

Mr. *Sacheverell.* This is a precedent that is very new. I never saw any of the like nature before. It lays a hard charge on you, as if your members never mentioned this evidence to you. The naming these gentlemen in the Message, 'and such other members as can inform the Lords, &c.!'—To grant an unlimited power of we know not whom, is not parliamentary.

Sir *Tho. Lee.* I think, the thing is quite new, or out of my memory. I would rather take a day's time to consider of precedents. I cannot agree that it is an original thing (as said) but things of this nature are nice between both houses.

Mr. *Boscawen.* There was a member examined about lord Essex. He asked your leave, when called upon by the Lords; and now it is much more reasonable that you should give leave.

Sir *John Trevor.* This is a matter of great importance. I would not deny the Lords any thing in which they have a judicial power; if you can give them any assistance, in that you may. Enquire into lord Stafford's Case, and you will find that sir Henry Vane, a member, was examined by the Lords; and some members now in lord Stafford's Case; but it was when the Commons were prosecutors. As for proceeding by Bills of Attainder, there are but few precedents, but what have begun here, but those by the king's Attorney General, by the king. I would not have you give up your privilege; but I would give the Lords satisfaction, and answer them by messengers of your own, and adjourn the debate till to-morrow.

Sir *Joseph Tredenham.* I would willingly comply with the Lords. I hear only of the

knows not how to speak of theirs, without giving a relation of his own; and that he looks upon himself as much murdered as any of them, by reason of his sufferings.

"This Examinant saith, That, after the lord Russell and colonel Sidney were clapt up in the Tower, he was sent for, and brought before the cabinet council, or select number of lords, and

precedent of the last session; and before you confirm that precedent, by adding another to it, I would consider.

Sir *John Guise.* I know my own ignorance in methods of parliament; but all desire to clear up the dust in this case. Rather than delay it, refer it to a committee, to see the manner of proceeding of the House, and inspect your Books, and we commend it to their dispatch.

Mr. *Ch. Montagu.* I am so far from hindering the information of the House, that I could wish we had begun the enquiry here. I believe the committee of the Lords meet not till Friday, and you may consider of it.

Sir *Robert Cotton.* I desire to see a full prosecution of this business. Never were men so illegally prosecuted and executed. But you have had no precedents of this nature, but the sending for sir Christ. Musgrave, and he was named by the Lords; and so far I would agree with the Lords, to the persons they name; but, as for the other part of the Message, 'That persons at their lordships pleasure may be sent for,' there is no instance of precedents; and seeing you have none, for the honour of the House you ought to consult methods of parliament, and to answer it to those that shall come after us. I move for a Committee.

Sir *Tho. Littleton.* I would not delay it so long as referring it to a committee. The former part of the Lords request seems reasonable, and is far from claiming a jurisdiction; but, as for the other part, to examine whom they shall see cause, of your members, I am utterly against that jurisdiction.

Mr. *Hampden.* You are rationally moved, by Littleton, to send no answer at all to the latter part of the Message.

Sir *Tho. Clarges.* I have a great difficulty upon me in this, concerning the Lords' Jurisdiction. By the statute of Hen. 4, 'There shall be no more Appeals of Treason of Lords against one another in parliament.' But, admitting the Lords had jurisdiction of themselves, they have none upon commoners, but, if this may tend to the accusation of commoners, it is against the right of the Commons; but if they say it is against such a peer, and such, but to have your members neither to know, whether it is against a commoner, or a peer, I am against it.

Sir *Edw. Seymour.* I came in late, but I collect from the debate, that the Lords desire Trenchard and Hampden to attend the Lords, and give evidence of the authors of the murders of lord Russell, &c. the advisers of the Quo Warrantos and Regulators of Corporations, and any other member to attend their lordships, when desired. I think this of that importance to the constitution of parliament, that you cannot find one instance of that kind. When an accusation has been from the Commons, then you have permitted your members to give evidence to the Lords, but upon an original cause from the Lords—If you examine upon the legislative, you are upon equal footing with the Lords; but will you submit and subject yourselves a degree lower, having no precedents to warrant your proceedings? I hope you will be tender how you admit it.

Mr. *Hawles.* It is said, 'There is no precedent of this Message from the Lords;' and, indeed, there is no precedent of what has been done lately in the abominable Trials. It is certain that a member may accuse a lord, and certainly there is no manner of mischief in this, but to do a great deal of good.

Sir *Tho. Lee.* I desire gentlemen would think how little things draw great consequences; if gentlemen see what they are about to do, perhaps they will not do it. I think I have read, or heard, that, in former times, the Lords sent to the Commons to persuade them to the necessity of giving Money; the Commons would not confer with the Lords about it. You may remember Skinner's case. The Lords tell you, now they are doing a thing that is the greatest matter in question, whether they can do it; and when you make yourselves a party, and consent to it, I know not how far it will go. It will be, or not be, as the Lords shall think fit. In Fitzharris's Case, at Oxford, the Lords would not accept your Impeachment. I would keep gentlemen on the ancient foundation. This case is an enquiry into matters criminal. I know the consequence of the Quo Warrantos against Corporations, and no man is so brutish as not to abhor the murders of lord Russell, &c. but if the Lords take upon them to make enquiry into that which you have power to do, and ought to do, they may, perhaps, bring a commoner summarily to be tried at their bar.

Mr. *Hawles.* Appeals were taken away by the statute Henry 4, of one lord against another in parliament, for Treason; but still there are for murder and felony. Appeals for treasons are always in parliament, and are to be tried by battail. If a man was antiquated, above sixty years of age, he was not bound to battail, nor a woman. But there is no colour that that statute took away Impeachments in parliament. I would have these persons, desired by the Lords, have leave to go.

Sir *Henry Capel.* I know, whenever privilege comes in debate, that it is a very tender and nice thing, but I hope it shall ever be for the preservation, and not destruction, of the government. I would not carry privilege to that excess to prevent common justice, that it may be obstructed. In this case, where you have reversed Attainder of these persons, I hope no Privilege will take place. I think

asked, 'whether he was of the council of six?' (for so the lord Howard had been pleased to call it.)

"This Examinant saith, That he saw there king Charles the 2d, the lord keeper North, and the lord Hallifax; and there were some other persons present, whose faces he did not see; but he doth not remember they had a clerk with them.

"Some questions were asked this examinant by the lord keeper North, and likewise by the king. And he saith, he was very much pressed to make a confession. But this examinant claimed (as an Englishman) the liberty not to accuse himself. Whereupon he was presently sent to the Tower, made close prisoner there, and indeed kept in the strictest custody for twenty weeks.

"But this Examinant saith, That, some time after the lord Russell was executed, and a little before the execution of colonel Sidney, he received an intimation by a private note, how that there was intention to try him for a misdemeanor; but he was bailed out, upon 30,000*l.* security.

"This Examinant saith further, That, after this, the duke of Monmouth came in, and was received at court, and got his pardon; but several coming to visit him, he began to be too free in his discourse, which did not please the court. And this examinant saith, That at the old Dutchess of Richmond's house, the duke spoke as if that those gentlemen who were put to death suffered unjustly.

"Whereupon this Examinant saith, That the king (after he had been acquainted with this by a lady,) would needs have the duke to confess his being concerned in the plot; and to that purpose there was a paper drawn, which the king would have him sign; and it was accordingly signed by the duke.

"And this Examinant saith, That a gentlemen (to wit) sir James Forbes came to him from the duke of Monmouth, with a copy of that paper the duke had signed, wherein the plot was owned; which as soon as ever this examinant had seen and read, he said, 'It was a confession of the plot; and, according to the law then in vogue and practice, it 'would hang him, because so little a while before colonel Sidney was condemned upon a 'paper that was given in evidence against 'him; for, said this examinant, if a paper said, 'but not proved, to be written by the Colonel, 'could be allowed to supply the place (for 'want) of a second evidence, then a paper 'which could be proved to be written and 'signed by the duke of Monmouth, might 'much more properly be made use of, as his 'evidence to hang other people.' And this examinant saith, That he was told by Sir James Forbes, 'that the duke was in a manner forced 'to sign the paper; for he was not only persuaded, but overborne in it, by the lord Hallifax.'

"And this Examinant further saith, That when sir James returned to the duke, he was concerned almost to madness; and declared, 'that, if he lived till the next day, he would 'have the paper again;' and accordingly (as this examinant was informed) he went to the king, and told him, 'he could not rest till he 'had it.' *

that is no original cause from the Lords. I think the peers, as part of the legislature, have power to enquire into these things, as well as the Commons. Here have been charters and mens lives taken away, and ill returns of members designed, and your laws destroyed thereby, and no remedy. It is said, 'There is no precedent for this, &c.' but there is a precedent the last session: sir Christ. Musgrave, and sir Philip Howard, attended the Lords, to give evidence in the case of lord Essex. As for a committee to consider this, it is a delay to the enquiry, and we ought to show our readiness to the Lords in it.

Sir *John Trevor.* I would know the date of the Message; if it bears date now, it is a small delay for a committee to consider it till to-morrow morning. Is it not better to allow the small delay till to-morrow, than to divide the House upon it? And the Yeas must go out.

Sir *Robert Howard.* It has been said by some, 'We must agree to all the message, or none.' Skinner's case was most foreign to this, for that was point of property, which might have had remedy in Westminster-Hall, and was an original cause from the Lords. Can this be a prejudice to you? But this will be a deep one; when you will do nothing yourselves in it, and hinder the Lords from doing it. 'You have heard a great deal of this matter, and let all pass, and the Lords think they can do something in the discovery, and the Commons delay contributing to it.' This will be said.

Mr. *Hampden.* The question is not properly 'Agree or not,' but you may divide the question. I am for maintaining all the privileges of the House, but you have none for obstructing justice. Our common law is founded upon eternal maxims of reason of any municipal law in the world: the civil law, the municipal law of the Romans, was so. When your privilege stops justice, it is time to hinder it. In the Popish Plot, the Lords sent for some of the Commons to give evidence, and particularly in the case of sir Edmundbury Godfrey, the Lords sent for witnesses perpetually. The thing is not judicially before you. In Lord Bristol's case, accusing lord Clarendon, the Lords over-ruled it, 'That a lord could not accuse another in parliament.' In such cases, when the Lords desire evidence, and you plead privilege, I could wish privilege out of doors.

Resolved, "That leave be given to Mr. Serjeant Trenchard, and Mr. Hampden, jun. to attend the Lords."

Mr. *Sacheverell.* Now you have given leave to your members, the Lords will easily understand it, but leave it an indifference for any to go that will." 5 Cobb. Parl. Hist. p 121.

"Hereupon this Examinant saith, That the king, with great indignation, threw him the paper, and commanded him, 'never to see his 'face more;' which he believes he did. So the duke went away, and by that means he escaped the trial for treason then.

"This Examinant saith, That he was told by Mr. Waller (who is since deceased), 'that 'the duke of Monmouth's owning the plot to 'the king was the cause of colonel Sidney's 'death; for the king balanced before.'

"This Examinant saith, That, after this, he was brought to a trial for a misdemeanor; and was convicted, upon the lord Howard's evidence.

"To this, the Examinant saith, He pleaded Magna Charta, and that chapter of it particularly wherein a 'salvo contenemento,' is mentioned: but yet the court, for all that, fined him 40,000*l.* and ordered him to be kept in prison till the fine should be paid, and he was to give security for the good behaviour.

"And this Examinant saith further, That the king made choice of putting him in prison. So he was committed to the marshal's house in the King's bench, where he continued for ten months.

"This Examinant said, He offered several sums of money: but it was answered him, 'That they had rather have him rot in prison 'than that he should pay the fine.'

"This Examinant also saith, That after this they put him in the common prison, where he was kept very close for ten or eleven months. Then they contrived a writ, called a Long Writ, to reach both his real and personal estate, whilst he was thus kept a prisoner.

"But afterwards, this Examinant saith, That he heard a new witness appeared; but this was after the defeat of the duke of Monmouth.

"Then, this Examinant saith, He was sent close prisoner to the Tower, by a warrant from the lord Sunderland; and he was put into such a room where there was no manner of conveniency; and there were forced upon him two of the rudest warders in the Tower, to lie in the same room with him: and after seven or eight weeks of this treatment there, he was removed to Newgate, where also he was kept close for eleven weeks.

"This Examinant saith, That his friends offered money for his pardon to some in power, who were the lord Jefferies and Mr. Petre, the sum of six thousand pounds. This proved effectual at last (though it is hardly possible for a man to suffer more than this examinant did); for, by the help of this money, on condition that this examinant would plead guilty to his indictment, he was to come off.

"This Examinant saith, That his friends advised him to it, because it could be prejudicial to no man living (there being none alive of those called the council of six) but the lord Howard.

"Whereupon this Examinant (pleading guilty) was discharged, paying 3 or 400*l.* to Graham and Burton, for the taking-out and procurement of his pardon.

"As for the subject matter of what this examinant confessed, he supposes no man will think he ought to be ashamed of it, who believes the lord Russell was murdered.

"And this Examinant saith, That this was the way which our ancestors always took, when the sovereign authority came to so great a height, as might be made out by many instances: custom had made this the law of England, and all civilized and well-governed nations about us had used the like way.

"But, notwithstanding this Examinant's pleading guilty, he saith, He hath been very ready to serve and secure the kingdom. And he declareth, That he was one of the two or three men, who saw letters from Holland, of this late most happy revolution. And he saith, he thinks king William's coming into England to be nothing else but the continuation of the council of six; and if not, he saith, he desires to be better informed.

"This Examinant saith, That, being asked by the lord Hallifax, 'How he came to send 'his wife to the man whom he looked upon as 'instrumental in obtaining the paper which he 'thought would endanger his life;' he answered, 'He did likewise send his wife to the 'lord Jefferies, Mr. Petre, and others.' And further he said, 'Who should this examinant 'send to, but to those in power? and who 'could effectually help him, but those who 'were in the seat of power?'

"This Examinant declares, That he did not think the lord Hallifax struck directly at his life, or that his lordship had any private personal pique against him; but that he was to carry on the cause he was engaged in. This examinant saith, his wife did several times go to the lord Hallifax, and he believes by her sent him his thanks. But indeed, this examinant saith, he doth not know of any solid effects of his kindness; if there were, he desires the lord Hallifax to do him the pleasure to tell him wherein. But this he saith, That he doth not believe any part of the six thousand pounds was given to the lord Hallifax.

"This Examinant saith further, That he never heard any thing of the duke of Monmouth's confession of the plot, till after the duke had signed the above mentioned paper which was sent him. He doth confess, that he had heard it as common talk, 'that the duke had confessed a plot;' and that Mr. Waller told him so indefinitely, but he could not tell whether he meant before the signing of the paper or not.

This Examinant saith, That what the duke of Monmouth did at that time was all of a piece, whether by speaking or writing; and he is sure that it was with the utmost reluctancy that the duke signed that paper.

"This Examinant saith, That he remembers no more in the cabinet council, but the lord Radnor, besides those he has already named; but he believes there were three or four more.

"But, this Examinant saith, He was bailed out on the 28th of November, 1683; and colonel Sidney, he thinks, was executed on the 5th of December following.

"The Examinant saith, That the duke of Monmouth appeared very firm to him, and engaged to use his utmost endeavours to save colonel Sidney. He saith, he came out of the Tower some few days before colonel Sidney was executed; and that he had an intention to give him a visit; but that his friends thought it would be useless, and indeed dangerous to them; and that he might write any thing he had to say. Accordingly he wrote to him, 'That he would come and see him if he desired 'it.' But colonel Sidney charged him, 'not 'to come, but to write, if he thought any in- 'conveniency would come of it.'

"And this Examinant saith, That the messenger who brought him the message before-mentioned was Dr. Hall, now bishop of Oxford, who applied himself to the dutchess of Portsmouth for his release. But her answer to him afterwards was, 'That she had tried, 'but could do nothing; for they would rather 'have him rot in prison than have the 40,000*l*.'"

Sir JAMES FORBES'S EXAMINATION, taken the 20th of November, 1689.

"The Examinant saith, That the night wherein the late duke of Monmouth signed the paper, he sent Bryon, or some other of his servants, for this examinant, in a hackney coach, at The Little Piazza; where he told this Examinant, 'That he had got a copy of a 'paper written by the king himself, which was for the owning of the evidence of Rumsey and others; which paper the said duke desired this examinant to shew to Mr. Hambden.' But this examinant told the duke, That that paper would make him infamous, and would be a means of destroying many men's lives.' Whereupon the duke sent this examinant to the lord Anglesey's, with the paper, whom he found going to bed; but, as soon as he was acquainted with the message, he admitted this examinant in to him; and, upon the reading of it, presently wrote a paper of reasons against it.

"The duke, before this examinant went to the lord Anglesey's, said, 'That, if it were so 'as this examinant had told him, he would have 'the paper again, though he died for it.' This examinant asked him, 'How he could get it?' The duke said, 'The king would shew it him, 'and then he would tear it out of his hands.' And the duke further said, 'That the duke of 'York was his implacable enemy.'

"The duke told this examinant, 'That the 'lord Hallifax persuaded him to sign the 'paper; but whether it were for his good or 'not, he knew not.'

"This Examinant says, The duke sent him to Mr. Hambden with it; who, as soon as ever he had seen and read it, said, 'That he was a 'dead man.' Mr. Hambden asked this examinant's leave to shew the paper to his father; which this examinant consented to; and when he returned, this examinant went back to the duke of Monmouth, whom he found that very night at the same place.

"There this examinant gave him the earl of Anglesey's reasons against the paper, together with his own thoughts of it; as also he reported to him what Mr. Hambden said concerning it. Whereupon the duke replied, 'That he saw 'they had a mind to ruin him; and he was only 'brought into court to do a job; and that he 'would not sleep before he had retrieved the 'paper.'

"The next day, colonel Godfrey came to this examinant; and told him, 'That the duke 'had recovered the paper, and got it into his 'own possession.' And this examinant went to tell Mr. Hambden, Mr. Charleton, and major Wildman, of it.

"But, before this, the duke told this examinant how kindly the king had expressed himself to him.

"This Examinant desired the duke to save colonel Sidney, if possible; but the duke feared he could not; but said, 'He had told the 'king how good a man the lord Russell was.' And when this examinant had told the duke how it was reported in the town, 'that he was 'come in to be a witness;' he answered, 'He 'never would.'

"This Examinant told the duke, 'That Mr. 'Hambden desired to see him;' but, though the duke thought it to be very dangerous, yet he went to give him a visit. The business was, as this examinant verily believes, to try whether he could save colonel Sidney's life or no; and this was before the duke of Monmouth had obtained his pardon.

"This Examinant further says, That the duke was with Mr. Hambden two or three hours; indeed he was not in the same room with them, but he verily believes it was to save the colonel as aforesaid.

"The duke did not tell this examinant of any confession he had made; but only talked of the king's kindness to him.

"The duke's servants told this examinant, at the Cockpit, that they were ordered not to suffer any of his old friends, or old Whigs to come to him; and yet, the next morning after, the duke of Monmouth appeared publicly at the Cockpit.

"This Examinant did hear nothing of the paper till after the duke delivered it to him; nor did he hear by him that the king promised not to make use of the paper as evidence, either to his own or any other person's prejudice: it might have been so talked of in the town; but this examinant does not remember that the duke named any particular person that made him sign the paper to do a job; only he said, 'The duke of York was his implacable 'enemy, and had a mind to ruin him.'

"This Examinant says, He did not hear the duke of Monmouth say any thing about his owning the Plot, before he shewed him the

paper; but he says, That Bryon, or some other of the duke's footmen, told him, 'That 'such and such were forbidden to see or pay a 'visit to the duke.'

"And this Examinant says, That he does not remember the duke's telling him any reasons that the lord used, who persuaded him to sign the paper.

"*The duke told this Examinant, 'It would* 'be a very hard thing to save colonel Sidney;' but ordered him positively to deliver the message to Mr. Hambden; and likewise told him, 'That he had acquainted the king, how good 'a man the lord Russell was, and how unjustly 'he had been put to death.'"

The EXAMINATION of Mr. JOHN TISARD, taken the 20th of November, 1689.

"This Examinant saith, That, at the lord Russell's trial, four gentlemen told him, 'That Keeling, who was to have been the first 'evidence against his lordship, being taxed of 'being drunk at a coffee-house;' he answered, 'That he was not; but confessed himself to 'be in a very great disorder, because, he said, 'he was that night to meet some gentlemen at 'the Gun, who were to give him instructions 'what to swear; but, he said, when he had 'received his instructions, he would make a 'discovery.'

"This Examinant further saith, he was informed, That this Keeling called his brother (who was a smith) from his work, saying to him, 'Trouble not yourself about working; 'for, if you will but swear, you shall ride in 'your coach and six horses.'

"However, this Examinant saith, Keeling was not produced at all; and he believes the reason of it to be, because some were apprised of the defence which the lord Russell could have made against his evidence.

"The said Examinant declareth, he knows nothing of the manner of the return of the jury.

"This Examinant saith, That, the session before the lord Russell was tried, there were some jesuits to come upon their trials; but yet, though they heard all the king's evidence, they had their trials put off, and the juries were discharged of them: but this examinant saith, That the lord Russell could not have an hour longer allowed him, although he desired but till the next day; and that too was, because he could not get the subpoenas but the night before, and therefore could not have his witnesses there to testify for him.

"This Examinant saith, He does not remember the names of any of the other judges but serjeant Pemberton.

"And he further saith, That, as soon as Jefferies saw this examinant to speak to the lady Russell in Court, he caused him presently to be turned out of the Court."

The EXAMINATION of Mr. SAMUEL JOHNSON, taken the 20th Nov. 1689.

"This Examinant saith, That he had brought the lord Russell's speech, written with his own hand, who certainly knew best what persons were concerned in his murder. And saith, It was fit to hear his own dying words, to find on whom he laid the charge of his death, though he had the Christian charity to forgive them.

"Then this following clause was read:

'I pray God, this is not laid to the king's 'charge, nor to the counsel, nor judges, nor 'sheriffs, nor jury. I pray God, forgive them; 'and for the witnesses, I pity them, and wish 'them well. The world is but like a dog-'kennel; the master says, 'hang this, whip ''the other and feed the third.''

"This was before he died, just about the time of the struggle about sheriffs; 'and,' said he further 'from the time of choosing 'sheriffs, I concluded, that the heat of that 'matter would produce some thing of this kind.'

"This Examinant saith, That the lord Russell told him, before any of the Protestant plot was so much as mentioned, 'he was very sensible he should fall a sacrifice; and that arbitrary government could not be set up in England, without wading through his blood.'

"This Examinant saith, That he was told by Mr. Snow, who belonged to the Lords house, that Mr. Atterbury the messenger had watch-'ed about Montague and South'ton Houses for some considerable time before the lord 'Russell was imprisoned.'

"This Examinant then read another part of the lord Russell's speech, which was this (applying it to the lord's own case),

'To kill with forms and subtleties of law, is the worst of murders.'

"This Examinant saith, he doth not remember the four gentlemen at present that could witness against Josiah Keeling; but he will endeavour to find them out. He confesses that he can say no more that is evidence, or like a witness."

The EXAMINATION of Mr. NORMANSELL, one of the Secondaries of the Compter, taken the 20th of November 1689.

"This Examinant saith, That Mr. Graham and Burton, who followed the king's business in general, were the prosecutors of the lord Russell. Sir Dudley North returned the jury; and he received directions from him, and had the panel under his own hand, for the lord Russell's trial.

"This Examinant saith, That sir Dudley had the books from him, and from his brother secondary; and that he chose the jury out of several wards, and sent the names of them to this examinant, with orders to summon them.

"This Examinant saith, That when the se-

condaries return for the Old Bailey, they do out of several wards; that is, two, three, or four.

"And this Examinant saith, That Mr. Bethel and his partner were the first who began to return the juries themselves out of several wards; that Mr. Shute and the now lord mayor did the like; and some other sheriffs, upon some special occasions, have done so too.

"As to Mr. Cornish, this Examinant saith, he did not return the jury; but sir Benjamin Thoroughgood did it himself. This examinant saith, he knows not from whence he had the panel; nor knows he any thing of colonel Sidney.

"This Examinant saith, That the Quo Warrantos were brought to him, sealed, by Burton or Graham, or some of their clerks; and he remembers, Mr. Tindale was one of their clerks.

"This Examinant saith, That he knows nothing of the regulators, nor any that asserted the king's dispensing power, save the judges.

"This Examinant saith, He doth not know that sir Dudley North packt the jury, or that any one was with him when he returned it."

The EXAMINATION of Mr. EDWARD TROTMAN, One of the Secondaries of the Compter, taken the 20th of November, 1689.

"This Examinant saith, That he supposes that Graham and Burton were the prosecutors of the lord Russell and of alderman Cornish; but he knows nothing of colonel Sydney.

"This Examinant saith, That sir Dudley North sent for the secondaries books, and returned the lord Russell's jury himself; but this examinant doth not know that he had a note of the names, or did it at the instigation of any one.

"This Examinant saith, That juries have been variously returned; but he knows not that juries were returned out of several wards till two years before the lord Russell's trial; the usual way was, to return them out of two, three, or four wards.

"This Examinant saith, He knows not upon what occasion Mr. Bethell returned the juries out of several wards; but he does not remember that any one suffered in Mr. Bethell's time.

"As to the Quo Warrantos, this Examinant saith, That he knows nothing of them, they were carried to the other Compter; but he supposes that Graham and Burton were the prosecutors of them.

"This Examinant saith, That he knows nothing of the dispensing power."

The EXAMINATION of Sir PETER RICH, taken the 22nd of November, 1689.

"This Examinant saith, That the lord Russell was the only person suffered when he was sheriff; but he knows nothing of any advisers or prosecutors in the lord Russell's case.

"This Examinant saith, That all the time of his shrievalty, he never empanelled any jury, or signed any panel, to the best of his knowledge. But this he says positively, that he never saw or knew of the panel till he heard it read in court.

"This Examinant saith, That he did go along with the lord Russell to the scaffold *ex officio*, as he was sheriff; and the other sheriff was there also. And he saith further, They were both commanded to do so.

"This Examinant saith, That he would not meddle in the return of jurors; for there was such a loud discourse of packing of juries the year before, when the then present lord mayor and Mr. Shute were sheriffs, that he was resolved he would not return any juries in his year; nor did he; nor were the books sent him by the secondaries.

"This Examinant saith, He does believe that either the secondaries or sir Dudley North did it; for he had not the books of the several wards (out of which they name jurors) sent him.

"This Examinant further saith, That the usual practice of the returns of jurors in the city of London, as he understands it, is by the secondaries, and in Middlesex by the under-sheriffs; and he saith, he never was asked during his whole year to empanel a jury.

"This Examinant saith, That he knows not who were the regulators of London; but he has heard of several, as sir Nicholas Butler, Mr. Charles Duncombe, and several clerks of companies; and that Aaron Smith was one of them.

"This Examinant saith, That sir Francis Pemberton, and he thinks sir Thomas Jones, were judges.

"The king's counsel were, sir George Jefferies, sir Robert Sawyer, Mr. Finch, and he thinks Mr. North, and another young counsel; sir George Treby was recorder.

Mr. Graham and Mr. Burton were prosecutors; but they were never with him about the trial; nor were they, as he knows, with the other sheriff, or brought any panel to the secondaries."

The EXAMINATION of Colonel GODFREY, taken the 22nd of November, 1689.

"This Examinant saith, That the duke of Monmouth shewed him a paper quickly after, that is to say, within two or three days after he surrendered himself, which paper was a declaration, or seeming confirmation of that plot with which the lord Russell and colonel Sidney were charged.

"This Examinant saith, He thinks the paper was signed with the duke's name to it; but the paper which the duke of Monmouth got from the king, was not the same with the other. And he saith, He believes he did not see that paper; but the duke told him, after the paper had been sent to the council, 'that he 'had signed such a paper.'

"This Examinant saith, That he under-

stood by him in the general, that that paper was a confirmation of the plot upon which the lord Russell and colonel Sydney suffered.

"This Examinant saith, That he thinks the duke told him, 'that the lord Halifax persuaded him to sign that paper; and the reasons which he said the lord Halifax used, in persuading him to it, were, that he might keep at court, and be near the king; or else he must be gone from thence.'

"This Examinant saith, That the first night the duke came to court, he went to visit him, with sir James Forbes; and the duke told them, 'how kind the king was to him, in giving him his pardon; and that he believed he owed a great deal of it to the lord Halifax;' and several times he heard him say; 'that the lord Halifax had been kind and serviceable to him."

"And this Examinant further saith, He never heard that the duke owned any conspiracy to the king before he signed the paper; indeed the duke of Monmouth said, 'that the king told him, he must submit to be asked some questions in public concerning the plot; and that he must submit to him, and not offer to contradict him.'"

The EXAMINATION of ANTHONY ROW, esq. taken the 22nd of November, 1689.

"This Examinant saith, That the duke of Monmouth sent him to the king with two or three letters, whom he found very angry at the duke for the company he kept, and particularly with the lord Howard; 'for,' the king said, 'he was so ill a man, that he would not hang the worst dog he had, upon his evidence.'

"This Examinant saith, He heard that the duke of Monmouth had a paper given him from the king, to consider of; he seemed unwilling to sign the paper; but at last consented to do it, provided he might not be asked to sign any other.

"This Examinant saith, That he being in the bed-chamber when the king told the duke he should not, he does not know whether he signed it or not.

"But this Examinant saith, That that paper was given to the king, and shewn to the council; but, they not liking it, it was either burnt or torn, and another paper was drawn.

"And this Examinant saith, That about that time, there being something of this put into the Gazette, he acquainted the duke with it, who was so much displeased at the news, that he bid us to tell every body we met, 'that it was false.'

"And this Examinant saith, That he doing as the duke had ordered him in a coffee-house, that night; the king was acquainted with it, and sent for this examinant early the next morning, and reprimanded him, and told him, 'that he did the duke of Monmouth more hurt than he was aware of;' and likewise commanded him not to speak of it any more.

"This Examinant saith, That the duke told him, 'he was resolved not to sign the second paper.' And he saith likewise, That one day afterwards, about noon, when he with Mr. Godfrey and Mr. Barker were waiting in the outward room at his lodgings for him, the lord Hallifax being with the duke and duchess in her room, the duke came out to them once or twice, and at last told them, 'he had done it.'

"And this Examinant saith, That, that night wherein he had signed the paper, he seemed angry with himself; 'for, he said, it might hurt other people; and that if it had concerned none but himself, he had not cared; but he would not rest till he had got the paper again;' and the next morning the duke told him, 'he had got it.'

"This Examinant saith, That the duke told them, 'the king had often pressed him to sign it; but when he did sign it, he knew not that there were any in the room besides the duchess and the lord Hallifax.' The duke said, 'he was often with the king about the paper;' and told this examinant, 'that the king said, He should never see his face more, if he did not sign the paper; but, if he would, he should ask him nothing but what he would grant.'

"This Examinant saith, That the duke told him, after he came out of the duchess's chamber, 'that the lord Hallifax had over-persuaded him, and made him do it, and engaged to him that the king should never let the paper be seen; and told him, this was the time to gain the king's favour.' But this examinant saith, it being so long ago, he only declares his belief, according to the best of his remembrance."

The EXAMINATION of Sir BENJAMIN THOROUGHGOOD, taken the 22nd of November, 1689.

"This Examinant saith, That he was one of the sheriffs of London at the time when Mr. Cornish suffered; but he knows nothing of the lord Russell, or of any thing else of the order.

"The two secondaries brought him the books, and he saw them return the jury; and he believes there were none but the two secondaries and their clerk at his own house, and he had no names brought him.

"This Examinant saith, That he knows not out of how many wards the jury was returned; but he thinks they were out of most of them, and believes it to be the custom of the city to return juries so; and he thought it a piece of justice in him to see the jury fairly returned, the gentleman that was to be tried having been one of his late predecessors.

"This Examinant saith, That the jury were of the sufficientest men of the city of London, and he believed them to be good men; and he saith, he believes that all the men who served on that jury were those he returned.

"This Examinant saith, That he returned the jury out of so many wards, because he

supposed the writ did direct them to be chosen out of the body of the city; and by 'sufficientest,' he meant the ablest and honestest men.

"This Examinant saith, That he never was spoke to, during all the time he was sheriff, about the returning a jury, directly or indirectly, neither by Burton nor Graham, nor by any other person; but, as the secondaries read the names, he ordered them to put them down.

"This Examinant saith, That he knows nothing of the other heads: but he was turned out; and Mosson, a papist, was put in his room."

The EXAMINATION of PHIL. PEREE, taken the 22d of Nov. 1689.

"This Examinant saith, That he hath been nine years clerk to Mr. Trotman; but he was not by at the return of the lord Russell's jury; yet saith, he made a copy of it, and that was under sir Dudley North's hand; but he confesses he did not see him sign it, though he verily believes it was sir Dudley North's own hand.

"As to Mr. alderman Cornish's jury, this Examinant saith, That he was with his master Trotman at sir Benjamin Thorowgood's house; and he believes that the other secondary was there also; and they had the books of both the Compters. And this examinant saith, that he writ the names as sir Benjamin Thorowgood directed him; and he believes the jury were substantial men, and men of the best reputations.

'This Examinant further saith That in juries in common cases, the pannels used to be returned out of two or three wards; and he believes these juries to be impartially returned. And he saith, that Graham and Burton never brought any names of the pannel, nor were they any ways concerned in it."

The EXAMINATION of Sir DUDLEY NORTH, taken Nov. 25, 1689.

"This Examinant saith, That he knows nothing of the prosecution, or of any thing that relates to it. He acknowledges that he empannelled the juries in the summer session, which was the time wherein the lord Russell was tried; at other times, the subordinate officers did it.

"This Examinant saith, That at that time he did it himself, the other sheriff never empannelled a jury that he remembers; and this jury he empanneled of his own accord, and without any directions.

"And this Examinant saith, That, to the best of his skill and knowledge, he returned the best jury he could, without observing any ward; and he went with a good conscience upon his oath, and returned a sufficient and substantial jury.

"This Examinant saith, That he drew this jury out of several wards, because that they might be the more substantial men; and, to the best of his remembrance, he saith, that sir Peter Rich concurred in this jury.

"This Examinant saith, That if sir Peter had opposed it, he should not have done it; and also saith, that he never understood that a jury was to be returned of men that lived all together. And he saith, so far as he remembers, the juries before were returned by the secondaries; but, this being a very extraordinary business, he thought it requisite to take care of it himself.

"This Examinant saith, That he supposes a jury might have been returned formerly out of as many wards as this was. He confesses, he had no orders nor directions from any man alive, to take care of this business; but he returned this jury as he thought a sufficient jury; and he returned it without fraud or any sinister end, or without any directions from any man or woman.

"This Examinant saith, That he was a freeman of London; and being so, the lord mayor's officers came to him, and told him, 'he was drunk to, as sheriff of London.' Afterwards, he saith, he was sent for to the lord mayor and court of aldermen, to seal a bond to execute the place of sheriff. This examinant saith, he excused it, as being unqualified; but he was told by them, 'that he must seal 'a bond to pay 1,000*l.* or else take upon him 'the office;' which he did; and he saith that he was 2,000*l.* out of purse by it; and which he never had again, either directly or indirectly.

"And this Examinant saith, he thinks he was a legal sheriff; and he was not prevailed with nor persuaded by any others to take upon him the office.

"This Examinant saith, That he took no care of what opinion the jury were, but only that they were substantial men; and that he consulted with none about taking the place of sheriff, but the lord mayor and aldermen.

"This Examinant saith, That he knoweth nothing of the two last heads."

The EXAMINATION of HENRY CRISP, esq. Common Serjeant of the City of London, taken Nov. 25, 1689.

"This Examinant saith, That he hath been about 11 years common serjeant; and that the precept to return juries (which is directed to the sheriffs of London) is, to return them out of the body of the City of London; indeed, he saith, he hath known juries returned out of six wards, and never out of fewer than four; but this Examinant saith, he doth not know out of how many wards the lord Russell's jury were returned.

"This Examinant saith, That as to the two last heads, he knows nothing of them; but confesses that he was in court at part of the lord Russell's trial. He saith, that sir Francis Pemberton was one of the judges there; and he thinks that sir Thomas Jones was another,

And he says, he was at Mr. Cornish's trial till Shepherd came in.

"This Examinant saith, That he remembers, the lord Russell desired he might be heard by counsel, and that they might have time to consider of it. But the court would hear them immediately.

"This Examinant saith, That he doth not know any thing on the second head; only he heard it was done at Whitehall, in a committee.

"This Examinant saith, That Mr. Chiffins sent for him, by the king's direction, to his lodgings in Whitehall; where he found his majesty alone, who asked him some questions concerning taking off the penal laws and test.

"This Examinant saith, That he knows nothing of who were the regulators for the city of London; but the late lord chancellor told the court of aldermen, 'that such and 'such were to be turned out.'

The EXAMINATION of Dr. H. CHAMBERLAINE, taken Nov. 25, 1689.

"This Examinant saith, That he knows nothing concerning the first head, nor who were the advisers of bringing Quo Warrantos. But he saith, that, meeting accidentally the lord Hallifax in the gallery at Whitehall, this examinant asked his lordship, 'whether he 'thought the aldermen were to blame, who did 'defend the city charter?'

"This Examinant saith, That he believes his lordship did not blame them; but he said, 'the king must or will have the charter;' but he saith, he rather thinks it was, 'the king 'must have the charter.'

"This Examinant further saith, That he believes he might tell this, as news, to the duke of Monmouth, the lord Russell, and some others.

"And this Examinant saith, That it was for the sake of sir John Lawrence, that he asked the lord Hallifax that question; and he saith, that he gave sir John advice to be cautious in what he did, he being one of the committee appointed to defend the city charter.

"This Examinant saith, That he knows nothing concerning the third head."

The EXAMINATION of JOSIAH KEELING, taken Nov. 25, 1689.

"This Examinant saith, That he doth not know that he was taxed with being drunk at a coffee house by any gentlemen a little before the trial of the lord Russell; but saith, perhaps it might be so: nor doth this Examinant remember that he said to any one that he was in any disorder; but he saith, he had some trouble of mind upon him for something he had done; but utterly denies that he then said any such thing.

"This Examinant also saith, That he did not then confess he was to meet any gentlemen at the Gun, to receive instructions how and what to swear; and this examinant denies that he told the earl of Lincoln 'that he would 'never confess any thing against a nobleman;' but he saith, that he told his lordship, 'that if 'ever he knew any thing against the government, he would certainly discover it; but 'any thing that had passed in private conversation, he would never discover.'

"This Examinant saith, That Rumbold and Goodenough having told him, 'that they 'had a design to take off the king at the Rye;' that was the real cause of his trouble in mind.' But he denies that ever he said 'he was to receive instructions to swear.'

"This Examinant saith, That he was subpœnaed, on behalf of the king, at the lord Russell's trial, on captain Walcot's account, and others; and that he gave evidence against the captain. And he doth say, that he was there during all the time of the lord Russell's trial; but knows nothing of any instructions that were given to himself or others against the lord Russell; and what he swore against Walcot, he swore voluntarily, without any body's instructing him.

"This Examinant saith, That, after he had informed against Rumbold and Goodenough, he took his brother (who was a smith) to the secretaries, to give in his information of what he had heard, because sometimes he took him along with him where he heard these people say the same words as he did.

"This Examinant saith, He doth not know that ever he told his brother 'he should ride in a coach and six horses if he would swear.'

"This Examinant saith, That he made applications to the lord privy seal, who helped him to his place in the victualling-office; and he saith, he thinks also, that he made his applications to the duke of York, in which place he hath continued till within these six weeks; and then he was turned out by the lords of the treasury.

'This Examinant saith, That he hath been at the Gun tavern in Wapping with his customers; but denies that ever it was to receive instructions what to swear.

"And for his place, this Examinant saith, That he applied himself for his place to the lord privy seal, upon no other consideration than that he was a great person, and a lord of the privy council; and he knew him, as he had seen his lordship, both in the privy council, and in that which sat at the secretaries office: And this examinant saith, That his lordship promised to speak to the king for him; but he doth not know for certain whether he did or not, though he believes he did, because he obtained his place.

"This Examinant saith, That he went to the lord Hallifax, to his lordship's house, the first time he spoke to him; and afterwards he reminded him as he was going up into the gallery at Whitehall; and after that, he heard he was put into a place in the victualling-office.

"That evening, this Examinant saith, he returned his lordship his thanks; and from that

time to this, he hath not spoke to his lordship, nor he to him, as he remembers.

"This Examinant saith, That he had not his employment till after the lord Russell and others were executed, he believes not till the 1st of January; he confesses that he did receive money from the king, as subsistence.

"This Examinant saith, He doth not know the gentleman who gave him the note upon Mr. Duncomb the banker, for 500*l.*; he thinks there was one Guy's hand to it; but he saith, he received not this note till long after the trials were over.

"This Examinant saith, That his majesty told him, 'he should also have 100*l.* a year;' but he never had it, nor ever sued for it; he never asked the king for any thing but his pardon; and that he wanted, as being privy to the design of killing the king at the Rye.

"This Examinant saith, That Evans the messenger carried him to the king."

The EXAMINATION of Mr. HENRY CORNISH, taken the 25th November, 1689.

"This Examinant saith, That he can say nothing concerning the lord Russell, colonel Sidney, or sir Thomas Armstrong; but saith, that his father was kept close prisoner from the time of his commitment to the day of his trial; and that captain Richardson would not admit any of his friends to come to him.

"And this Examinant saith, That he went to Normansell, the secondary, for a copy of the panel; and that either he or his clerk told him, 'that Burton and Graham had got it;' and when he came again in the evening to them for it, one of them told him, that they had received express orders from above, not to let him have it."

The EXAMINATION of Mr. ROBERT YARD, taken Nov. 29, 1689.

"This Examinant saith, That the advertisement concerning the duke of Monmouth, which was put into the Gazette, about the time he had a pardon, was, as he believes, what was treated of in council the day after the duke came in; and he saith, that, to the best of his remembrance, it was the giving in an account of what passed between the king and the duke at his coming in.

"And this Examinant further saith, That he received the paper either from the lord Sunderland, or sir Leoline Jenkins; but he remembers not particularly from whom of them; for he saith, that either of the secretaries give directions as to the matters that are to be put into the Gazette."

The EXAMINATION of Mr. JOHN PHELPS, taken Nov. 29, 1689.

"This Examinant saith, That what he heard Keeling say, was at the Fleece tavern in Cornhill, where Keeling came in to some company with whom he was; and some of them enquiring into the reason of the disorder which he seemed to be in, Keeling told them, 'That he lay under a very great temptation, for he had considerable proffers made him of money, and a place worth 100*l.* or 80*l.* per annum, to do something for them.'

"But this Examinant saith, That Keeling then told them, 'he knew nothing;' and desired the company to testify, 'that he was a very villain, if he swore any thing against any body.'

"This Examinant saith, He thinks that Keeling said, 'he was to go to the Bull-head, in Tower street, to treat with great persons about it;' this was a week before the discovery of the plot.

"This Examinant saith, That Keeling did not mention who the great men were, whom he was to meet.

"But this Examinant saith, That he was ready, at the lord Russell's trial, to have witnessed against Keeling; and he would have come in, if he had been called; but he was only desired, and not subpœnaed, to be at the lord Russell's trial.

"This Examinant saith, That he was never asked to come in at any of the other trials; and indeed he durst not appear at the other trials.

"This Examinant saith, That Mr. Morris, Mr. Hagar, Mr. Bates, and Mr. Haly, were present, when Keeling talked as before hath been declared.

"This Examinant saith, He knew not that Keeling was a witness against captain Walcot till after the trial was over; and he cannot remember whether he knew of Walcot's trial before he was tried or not; he believes he was out of town about the time of the trial of Walcot, as he often used to be for his health; but he saith, he heard, before the trial of Walcot, that Keeling had made a discovery of the plot."

The EXAMINATION of Mr. THOMAS MORRIS, taken Nov. 29, 1689.

"This Examinant saith, That he had no notice of captain Walcot's trial, but by common fame, till after he was tried.

"And this Examinant saith, That he never saw Keeling but once in his life, and that was at the Fleece tavern in Cornhill, with about half a dozen persons more; and then he thought he looked melancholy, as if he had been disturbed or distracted.

"This Examinant saith, He believes that he was known to several of the company, though he was an absolute stranger to him.

"This Examinant saith, He doth not remember that any questions were asked Keeling; but he said of himself, 'That he was sent to by the lords in the Tower; and two or three gentlemen, who came from them, told him, 'That his party had disobliged him, and now he had an opportunity to revenge himself of

'them; as also, that he could not be insensible 'there were some persons who designed 'against the government; and, if he would 'discover them, he should have an office;' but he knows nothing of the value of it.

"This Examinant saith, That hereupon, one of the company asked Keeling, 'Why he 'troubled them with this discourse?' saying, 'if he knew any thing against the govern- 'ment, it was his duty to discover it:' To which Keeling, in reply, told them this; 'Be- 'cause,' said he, if I should be prevailed on by 'the temptation of money to witness any 'thing, you should be able to testify against 'me, that I had declared I knew nothing in 'agitation against the government.'

"This Examinant saith, That Keeling told this to the said company two or three days (to the best of his remembrance) before he heard any such thing as a Presbyterian plot talked of.

"This Examinant saith, That Keeling told them, 'it were the gentlemen that came from 'the lords in the Tower, who promised him a 'great reward and a good office; and that he 'had met them once, and was to meet them 'again that night at a tavern in Tower-street.' He doth not believe that Keeling was in drink.

"This Examinant saith, That he was not at captain Walcot's trial, for he believes he was then in the country at Wimbleton: He believes he acquainted sir William Poultney with what he heard Keeling say, before the lord Russell's trial; and he also told it to Mr. Stephens; whereupon, he was subpœnaed to the lord Russell's trial, to which he went; but the trial was not till three or four days after the time that he was directed to attend.

"This Examinant saith, That a second subpœna came the night before the trial; but he, being from home, did not receive it till after the trial was over.

"And this Examinant saith, That he did not know that Keeling was a discoverer of the plot till after the trial of captain Walcot; for he was then at Wimbleton, and it was sent him for news, as if he had been 100 miles off."

The EXAMINATION of Mr. PETER HAGAR, taken the 29th of November, 1689.

"This Examinant saith, That about three or four days before that which was called the Presbyterian plot broke out, Mr. Keeling came in company where he was, at the Fleece, in Cornhill, and seemed to be very much disordered; and told the company, 'he had been 'with some persons of quality, who said, to 'him, he had now an opportunity of making 'both himself and his family, and offered him '100*l.* per annum; and said, he might ride 'in his coach and six horses to Windsor.'

"This Examinant saith, That Keeling told him, 'he was to meet some persons of quality 'that night, and he thinks he said lords, with 'whom he had been before.'

"This Examinant saith, It was in order (as he understood by Keeling) to discover a plot; and he told them, 'that if he should be so far 'prevailed with as to swear, Keeling desired 'us to bear witness against him, That he then 'declared, he knew nothing wherewith to 'charge any person living; and if he did 'hereafter give evidence against any person, 'he himself then said, he was the greatest 'rogue and villain in the world.'

"And thereupon, this Examinant saith, One of the company advised him, 'That if he 'knew any thing against the king or govern- 'ment, he should declare it; but, if he knew 'nothing, he had not best to go to them, for he 'could not tell under what temptations he 'might fall.'

"This Examinant saith, That Keeling told them, 'he would go, because he had pro- 'mised them in the morning to meet them 'again that night.'

"This Examinant saith, That, when he heard of the lord Russell's trial, he acquainted the lord Russell's servants with what he hath now sworn; and he attended at his lordship's trial, but Keeling was not produced there as a witness; and he saith, he also spoke of this matter to others, but never to any magistrate of it.

"This Examinant saith, He thinks he knew Keeling was a witness at captain Walcot's trial; but he did not then offer himself to be a witness, because of the difficulty of the times.

"Moreover, this Examinant saith, There were in his company, at the Fleece, Mr. Morris, captain Phelps, Mr. Hornby, Mr Grange, a brewer in Westminster, Mr. Haley, and Mr. Bates, when Keeling was there."

The EXAMINATION of Mr. ROBERT BATES, taken the 29th of November, 1689.

"This Examinant saith, That he was at the Fleece tavern in Cornhill, with Mr. Morris, captain Phelps, and others, when Keeling came in, like a man in a maze: whereupon, one asked him, 'What was the matter?' Keeling answered, 'He was offered some money; he could have a place worth 120*l.* per annum, to make a discovery, or to impeach 'some people of a plot against the government.'

"And this Examinant saith, Keeling also told them, 'That he had met some gentlemen, or lords, of the Tower, and was to meet them again; but he knew nothing in the world.'

"This Examinant saith, That one of the company told Keeling, 'That if he did know 'any thing against the government, he would do well to discover it; if not, he would do well to keep out of such temptation.'

"Afterwards this Examinant saith, Keeling broke out into a passion, and said, 'He knew nothing at all; and desired the company, if he should make any discovery hereafter, to bear witness against him.'

"This Examinant saith, That, some time after, he saw Keeling come into the Amsterdam coffee-house, with William Rumbold, a brewer, after a more wild manner than before, and said aloud, 'Gentlemen, It is reported, that I have 'discovered a plot against the duke of Monmouth, the lord Russell, and others; but I 'know nothing of it, and am falsely accused;' or to that effect.

"This Examinant saith, That he never heard Keeling name any body that offered him money; but he heard him say, 'that he might 'ride in a coach and six horses to Windsor.'

"This Examinant saith, That he believes he told this to 20 people, before the lord Russell's trial. And he saith further, That Keeling used to be much in their company for a year before, for they had a kind of a club.

"But this Examinant saith, He doth not remember that he heard that Keeling was witness against Walcot; but he heard he was a discoverer of the plot; but he doth not remember the time when he heard it."

The EXAMINATION of Mr RICHARD HALEY, taken the 29th of November, 1689.

"This Examinant saith, that, some few days before the discovery of the presbyterian plot, Keeling came into the Fleece tavern in Cornhill, into the room where he was with other company. Keeling was seemingly confused; and said, 'he had a great offer made him, or '120*l.* per annum, to be a discoverer of a plot; 'but he knew of no plot; and desired the company, if ever they heard he should discover 'any plot, or be a witness against any one, to 'bear witness against him, for he knew of 'none.'

"And this Examinant saith, That Keeling told them, 'that he came from some great persons; and he was to go to them again, to the 'Tower, or the Bull Head tavern near the 'Tower, that night.'

"And further this Examinant saith, That he doth not remember that he spake of this to any one; for times came on so fast, and proved so dangerous, that he was afraid to speak of it.

"This Examinant saith, he was at the trial of the lord Russell. But further saith not."

The EXAMINATION of Mr. JOSUAH MOORE, taken the 29th of November, 1689.

"This Examinant saith, That he knows nothing concerning Keeling, nor of any of the heads mentioned in the order."

The EXAMINATION of Mr. JOSIAH KEELING, taken the 29th of November, 1689.

"This Examinant saith, That the Fleece tavern in Cornhill was constantly his tavern; as also Mr. Grange's, Mr. Morris's, Mr. Haley's, and others, when they went to the exchange; but he remembers not that he was in any agony or trouble of mind there, or that he told his company, 'that he was to meet any persons 'concerning the discovery of a plot, or that he 'was ever promised a groat, or any employ'ment; or that he desired them to bear wit'ness against him, if he pretended to say any 'thing of any plot; or that he knew nothing 'of one.'

"This Examinant saith, That, after he did discover the plot, he was in danger of his life, from three of these men.

"This Examinant saith, He was subpœnaed as a witness against Walcot; and he heard the trial of the lord Russell, being carried thither by a messenger, in whose custody he was for three months.

"This Examinant saith, That he had not a pardon till two or three months after Walcot's and Hone's trials; and he believes he had not the money from the king, till after he had his pardon; but he lived at his own charge in the messenger's hands.

"He further saith, That he was examined before the lord keeper North and Mr. Secretary Jenkins, the earl of Rochester and the lord Godolphin being present; and he was likewise examined by Secretary Jenkins alone, before he went to the king.

"This Examinant saith, That he knew nothing against the lord Russell, but upon hearsay from Goodenough."

The EXAMINATION of Mr. WILLIAM MAN, taken the 29th of November, 1689.

"This Examinant saith, That he knows nothing concerning any thing mentioned in the order."

The EXAMINATION of Mr. JOHN KEELING, taken the 1th of December, 1689.

"This Examinant saith, He knows nothing concerning three heads mentioned in the order. He saith, That he never discoursed with his brother about any thing of the plot, before the 13th of June, 1683, the day of its discovery.

"This Examinant saith, That on that day, his brother called upon him, about nine or ten of the clock in the morning, and took him along with him to a neighbour's to drink; from thence to a coffee-house, where his brother discoursed with one Hone, about goose quills and swans quills, the blackbird and goldfinch, which he understood nothing of; and from thence we went to the Dolphin tavern, where they met with Goodenough and others; there they talked of taking off the blackbird and goldfinch, meaning the king and duke of York.

"This Examinant saith, There was a list read, of dividing the city between his brother Josiah and Goodenough. After they parted, this examinant told his brother, 'he understood not that gibberish, and therefore would not be

'concerned;' but his brother told him, 'that 'he *should* come to no harm.'

"This Examinant saith, That from thence his brother carried him to Secretary Jenkins; where this examinant being unwilling to go, he told him, 'that he must go thither or to 'Newgate:' There he was examined about the discourse between Goodenough and his brother Josiah; and there sir Leoline Jenkins shewed them a warrant, under the king's hand, for Josiah's pardon.

"This Examinant saith, He had no pardon, nor did he ask for any, because he wanted none; for he discovered what he knew within 24 hours.

"This Examinant saith, That from the Secretary's they went to the Fleece tavern in Southwark, where his brother sent for Mr. Peckham, who came to them; their discourse was in commendation of him, for endeavouring to discover the plot; saying, 'If he would but 'discover what he knew, he should be well re'warded.'

"This Examinant saith, That the next morning he was with his brother at the Flanders coffee-house, where they met two men to him unknown; who also commended him for what he had done, and invited him to dinner; his brother did go, but he could not, being otherwise engaged.

"This Examinant saith, That he told Mr. Tory, his brother's master, all that was discoursed of a plot; and the next day he told it to others; whereupon all the persons that were informed against fled. Upon this, he was called before a private council, where were the lord keeper North, and the lord Roberts, and some others, where he was examined, what and to whom he had discovered; which he told them.

"This Examinant saith, That he knows not who this Peckham was, that encouraged him to expect a reward if he would discover all; but he hears he is since dead.

"This Examinant saith, That he was never carried to Windsor, nor his brother, as he knows of; nor does he know that his brother offered him any thing to come into the plot.

"This Examinant saith, He was subpœnaed to be at the lord Russell's trial, and sworn to go to the grand jury; but he was not examined.

"This Examinant saith, He knows not of Peckham's going to Windsor; but he heard he was stopt at Hounslow in going thither, but knows not by whom.

"This Examinant saith. He knows not of any design to make persons subscribe to the carrying on of the plot; but indeed he heard some discourse of it.

"This Examinant saith, He was in court when Hone was tried, and his brother a witness against him; and saith, he knows not who were to be seized about the plot; but heard that some were to be.

"This Examinant saith, He heard his brother had received 500*l.* from the king, after the discovery of the plot was made; and that he brought it to a coffee-house, where he heard it.

"This Examinant saith, That there was such a difference between him and his brother, upon his employing Mr. Jones to let Goodenough and the others know what his brother had informed against them, that they are hardly yet reconciled.

"This Examinant saith, That he was against his brother's bringing him into a thing which he knew nothing of, nor did believe, till after the proclamation; and that Lee came in to discover, and that men were taken up."

The EXAMINATION of Mr. WILLIAM HORNEBY, taken the 4th of December, 1689.

"This Examinant saith, That he knows nothing of the three heads in the order. But this examinant saith, That, a little before the breaking out of the Rye plot, he was with some company at the Fleece tavern in Cornhill; where Josiah Keeling came in to them, seemingly under some disturbance of mind.

"This Examinant saith, As well as he can remember, Keeling said, 'he was offered an 'employment of 60*l.* or 80*l.* per annum, to 'swear; but he knew not what, nor against 'whom, to swear.'

"This Examinant saith, That then, after Keeling had sat a little while, he said, 'it was 'a brave business, to have 80*l.* per annum to 'swear.'

"And this Examinant saith, That Keeling said farther, 'That he was to meet some per'sons in Tower street that evening; but he 'knew not about what.' But he saith he doth believe that Keeling did meet some persons there."

The EXAMINATION of Mr. JOHN BELCHER, taken the 4th of December, 1689.

"This Examinant saith, That Josiah Keeling had always the character of an ambitious man; but he knows nothing of his threatening or inducing men to swear concerning the plot.

"This Examinant saith, That he was by when Keeling petitioned the duke of York for a place in the victualling-office.

"But this Examinant saith, That he knows nothing of his own knowledge of the regulators; but he hath heard that Mr. Jones was one."

The EXAMINATION of Mr. CRISPE GRANGE, taken the 4th of December, 1689.

"This Examinant saith, He was at the Fleece tavern in Cornhill, in June 1683, with other persons, when Keeling came in there to them; he was discomposed, and told the company, 'That, the night before, he met a person 'belonging to the Tower, who told Keeling, 'That he kept company with persons con-

'cerned in a plot; and if he would discover 'them, he should be carried to Windsor in a 'coach and six horses, and have a good office 'bestowed upon him.'

"And this Examinant saith, That Keeling told them, 'That that night he was to meet 'him again; but he said, he knew nothing 'against any one: and if he should be tempted 'to be so great a rogue as to swear against any 'person, he desired the company to bear wit-'ness against him, for he knew nothing;' and so he left us."

The EXAMINATION of Mr. WILLIAM BRIDGMAN, taken the 4th of December, 1689.

"This Examinant saith, That he knows nothing of the heads in the order; save only, that several lords met, in the year 1687, in the Secretary's office, and that several times, about the regulating of corporations; viz. the late lord Jefferies, the marquis Powis, the earl of Sunderland, the lord Arundell of Warder, the earl of Castlemain, sir Nicholas Butler, and Mr. Petre.

"This Examinant saith, That business was projected elsewhere, because things were brought to the office only to be transcribed. He hath heard also, that there was a sub-committee, to manage that affair, whereof Mr. Brent was chief, and that Mr. Roberts and Mr. Dennis were joined with him; but he never saw the lords to give them any commission, or heard that Aaron Smith was concerned.

"This Examinant saith, He was not one of the clerks of the council when the franchises of the city of London were seized; but he remembers that he did set his hand to an order of council touching the regulation of several companies of London, or the livery men, or courts of assistance; but the order was brought to him ready drawn; and he signed it, as being one of the clerks of the council then in waiting.

"This Examinant saith, That he attended at the committee of council for foreign affairs; but he was at no cabal; and the franchises of London were destroyed before ever he attended any cabal or committee; and he never was present at any debate concerning that matter.

"This Examinant saith, That, when papers were wanting, he was sent for to Mr. Chiffin's lodgings, and always attended in the outward room.

"This Examinant saith, He never knew any thing of the dispensing power, but by the printed papers and hearsay.

"This Examinant saith, That the surrender of charters, at the latter end of king Charles the second's reign, came in but slowly; but in king James's time they came in in a glut."

The EXAMINATION of Sir JOHN MOORE, taken the 6th of December, 1689.

"This Examinant saith, That he knew nothing concerning the three heads; that it was not he who did reject the sheriffs, but the court of aldermen; they did set aside Mr. Papillon, because he had drunk to sir Dudley North.

"This Examinant saith, That he believes Mr. Papillon and Mr. Dubois demanded the poll; but the court denied it them.

"This Examinant saith, That he drunk to sir Dudley North of his own motion; because it was usual, when men of estate came from beyond sea, who are thought fit and able, to make them sheriffs, to save the citizens.

"This Examinant saith, That sir John Buckworth, with others of the Turkey company, recommended him as a fit person to be sheriff.

"This Examinant saith, That the soldiers were not sent for to interrupt the poll, but to keep the peace, for the poll did go on; and he does not know that the books were taken from the clerks.

"This Examinant saith, That he had no directions from Whitehall to reject the poll; but it was the court of Aldermen did reject it; and he doth not remember that, either the day before, or that morning of the poll, he made any promise not to disturb the poll.

"This Examinant saith, He remembers not what time of the day he went to disturb the poll; but he saith many of the citizens came to his house, and would have him to the hall, telling him the poll went on, though he had adjourned; which adjournment was by the advice of the court of aldermen.

"This Examinant saith, He doth not believe, nor remember, that he had orders, advice, or intimation from the court, to drink to sir Dudley North; nor did Mr. Secretary Jenkins ever recommend him to be sheriff; he came indeed often to visit him, but never gave him any directions.

"This Examinant saith, That not any person did apply himself to him about the taking away the charter of London; for he was always against it.

"This Examinant saith, That at the poll his hat flew off, and he was thrust against the wall; and if some of the officers had not stuck to him, he had been down under their feet.

"This Examinant saith, That the city records say, that one of the sheriffs, for these 200 years, have been chosen by drinking to, till the year 1641; the other is chosen by hands in the common hall.

"And this Examinant saith, He refers to the records how the sheriffs were chosen: And for three preceding years, he believes, two or three sheriffs were made by his predecessors by their drinking to them; but this he refers also to the records.

"This examinant saith, He believes the ceremony of the lord-mayor's drinking to the sheriff is recorded; and he believes, that it is a received opinion of the city, that the person whom the lord-mayor drinks to, is sheriff; he does not remember that it was disputed till of late; for formerly a person drank to by the

lord-mayor was not excused from being sheriff, without he fined off.

"This Examinant saith, He thinks two or three paid their fines for being drank to by sir Robert Clayton."

The EXAMINATION of Mr. THOMAS TANNER, clerk of the peace for the city of London, taken the 4th December, 1689.

"This Examinant saith, That he brought in the original pannel for the juries of the session for London, when the lord Russell was tried, which was taken out of 19 wards; and the names of the several persons in the panel were read to the lord Russell, out of which 12 were chosen."

The EXAMINATION of AARON SMITH, taken the 6th December, 1689.

"This Examinant saith, That he was a prisoner in the Tower, when the lord Russell and colonel Sidney were tried; but, before he was sent thither, he was kept by the foot guards in Scotland-yard, and lay upon the bare boards for 4 days and 5 nights

"This Examinant saith, That, whilst he was kept there, he was several times brought before the king; but he refused to answer, until he was sent to a legal prison; whereupon he was carried to the Tower, and kept there close prisoner for 19 weeks and 5 days, at 5*l.* a week charge to himself.

"And this Examinant saith, That two warders watched him, and lay in the same room; and would have lain in bed with him, but he would not suffer it.

"This Examinant saith, That one of his warders told him, 'There was one sir Ambrose 'Philips to speak with him, who had an order 'from one of the secretaries to come as often as 'he would, and bring whom he would along 'with him; but then he was alone.'

"And this Examinant saith, That when sir Ambrose came in, after some other discourse, he told him, 'It was in his power to make 'himself what he would; for, said sir Ambrose, 'you know this rogue Sidney is a traitor; and 'you may make yourself what you will, if you 'will discover what you know of his designs 'against the government.'

"This Examinant saith, he replied, 'That 'he could not say any thing that could touch a 'hair of colonel Sidney's head.' Then sir Ambrose Phillips said, 'If he might advise the 'king, he would have all the damned Whig 'rogues hanged;' and as for your part, said he to this Examinant, 'every body knows that 'you are guilty.'

"This Examinant saith, That he doth not know any regulators of corporations of his own knowledge; but he knows some who went under the name of regulators."

The EXAMINATION of Mr. WILLIAM ROUSE, one of the lord Russell's jury, taken the 11th of December, 1689.

"This Examinant saith, That he neither knoweth Burton nor Graham, nor doth he know that he saw them at the lord Russell's trial.

"This Examinant saith, That he was summoned by one of the sheriff's officers; he never heard of the heinousness of the lord Russell's crime from any one, nor was he either persuaded or encouraged by any one to attend on that jury, and he never was but once upon any jury.

"This Examinant saith, That the sheriffs usually do provide a dinner for the jury; but, the dinner being spoiled, he clubbed for his dinner, which he thinks came to 3*s.*; and since, he saith, he hath been upon the grand jury, but upon no other jury."

The EXAMINATION of Mr. NATHANIEL WADE, taken the 6th of December, 1689.

"This Examinant saith, That he knows nothing of the three heads; but he saith, that Josiah Keeling accused him of being in the Rye plot; although, to the best of his remembrance, he had never been above twice in his company.

"This Examinant saith, That he never heard Keeling say he was offered any reward for discovering the plot; but he heard him speak very extravagantly at the Salutation tavern in Lombard-street; and he said, 'he 'would do some brisk thing;' whereupon said Mr. Nelthorp, who was then also in the company, 'I prithee, be not mad.'

"This Examinant saith, That presently after he heard his name was put into a proclamation; but there he was called by the name of Ward; but in the next gazette his right name was put in."

The EXAMINATION of Mr. WILLIAM RICHARDSON, taken the 6th of December, 1689.

"This Examinant saith, That sir Thomas Armstrong was committed to his custody by secretary Godolphin's warrant, which he produced, as also the rule of court for his execution.

"This Examinant saith, That sir Thomas Armstrong had one iron on; and the reason of it was, because he was outlawed for high treason; he saith, he thinks that the lord Jefferies, sir Francis Wythens, and sir Robert Wright, were three of his judges.

"This Examinant saith, That the lord Russell was brought into the sessions, and there committed to him as the sheriff's officer; but Mr. Cornish was committed to Newgate by sir Francis Wythens.

"This Examinant saith, He did not shackle them, nor ever put irons on the lord Russell,

nor shewed any to him; nor had Cornish any, being in a safer place than sir Thomas Armstrong.

"And this Examinant further saith, That he had no money of the lord Russell; and that what money was given, his wife had it."

The INFORMATION of JOSEPH DUCASSE.

"When colonel Sidney was arrested, I had not been long in England; I did not know the laws, customs, and language of the country, and had but few acquaintance to inform me, and they involved me in the same prosecution; so, having then little or no assistance, I was not allowed to judge; but, since, I have made it my business, not only to inquire, but also to serve him in as much as I was able, having afterwards obtained the liberty to visit him: by the informations he gave me, and by the discovery I made abroad, according to my knowledge, experience, and judgment, it was the greatest injustice that ever was done, and greater in that it was done upon pretence of justice, which I shall shew as far as I am able.

"Colonel Sidney was arrested, the 26th of June, 1683, about one of the clock, at his dinner; immediately after sir Philip Lloyd came with an order to seize his papers; and after dinner went and searched the house, but thought not fit to take any, but some that lay loose upon his table, and in an old open trunk that stood by, and put all those papers into the said trunk and a pillowbeer, and desired colonel Sidney to put his seal upon them; which he refused, and afterwards told me the reason, 'That he well remembered what passed at 'colonel Mansell's lodgings.' And then sir Philip Lloyd put his own seal upon them, and promised colonel Sidney they should not be opened, but in his presence; which promise was not kept; for he told me oftentimes, and at the day of his death, that he never saw either trunk or pillowbeer again, though he did by my hand petition the king to have them returned him, because there were some amongst them that might conduce to his justification.

"From his house, he was brought before the king's council; and, upon examination, he thought he gave them such answers as might have discharged him; but he was sent to the Tower by a warrant from sir Leoline Jenkins, for high treason; at which time nothing of that which was pretended at his trial could be imputed to him; the lord Howard was not seized till several days after, and his papers could not be examined at that instant; the same day his monies and bills of exchange were seized in Thomas Shepherd's hands; some weeks after, his goods both in town and country were seized to his very wearing cloaths, that his servants had not the liberty to carry him linen to change (about four months before the bill was found against him); and I knowing that the marquis of Halifax was his kinsman, I applied myself to him, and by his means obtained relief from some of those grievances; and, by his lordship's means, I had the liberty to visit colonel Sidney during his imprisonment.

"The 6th of November following, an order was sent to the lieutenant of the Tower, to bring colonel Sidney the next morning before the king's bench; and he was accordingly brought into the palace yard of Westminster, between ten and eleven of the clock, before the grand jury was assembled; and consequently they could know whether the bill would be found against him, unless they had intelligence with the grand jury.

"The bill was found, and he immediately hurried to the bar to be arraigned. The bill was read to him, perplexed, confused, and long, containing a heap of crimes distinct in nature, distinguished from each other by law (as he afterwards told me): one particular I well remember, that he said, 'That the indictment says, he did conspire (with many 'others to the jury then unknown) on the 30th 'of June, and many days both before and after, 'in the parish of St. Giles's;' whereas he was then, and had been some days before a close prisoner; which was impossible he should be at the same time at St. Giles's and in the Tower, and it was morally impossible for the grand jury to know he did conspire, unless they did know with whom.

"He complained much of the injustice done him, when, upon some contest at his arraignment about some points of law, he desired counsel to frame objections, which was refused; he afterwards presented a special plea ready engrossed, which was refused, unless it might be peremptory; declaring, 'if it was 'over-ruled, he should be no further heard;' 'and the chief justice threatened, 'that judgment of treason should be immediately entered, if he did not come to the general 'issue;' and so was forced to plead Not Guilty.

"Colonel Sidney did also much complain, that the copy of the indictment was refused him, which might have been of great use to him, to make his defence and exceptions, it being so long and intricate that the ablest lawyers could give him but a very imperfect account of it upon hearing: thereupon, he produced an authentic copy of the statute wherein it is plainly enacted, 'That all men, in all 'cases, whether they be such as fall out against 'the king or any others, shall have copies of 'such records as are against them.'

"He complained very much of the irregularity of choosing the jury by whom he was to be tried; when a copy of the panel was sent to him, after he had read it, he told me, 'he knew 'but the names of three gentlemen, which 'he resolved to have accepted, but they did 'not appear at his trial;' the others he excepted against, as not being freeholders, and such as were then servants in the king's pay, as unfit persons to try him, being prosecuted at the king's suit; and the rest were mean, sordid, and mechanic people, and not fit persons to judge in such a case. You may see it

more at large in his trial; and, if your lordships please, in his memorials he has left me.

"He did much complain against the lord chief justice, for interrupting him in his just defence; and was observed so well to choose his time of breaking off his discourse, as never to suffer him to finish any point that pinched too hard upon the undue practices of his prosecutors, and most conduced to his defence: he desired the chief justice, as gently as he could, 'to proceed softly and fairly; that no 'delay ought to be esteemed long, when the 'life of a man was in question;' but all was in vain: colonel Sidney told me, 'That, before 'his trial, he was credibly informed, that the 'lord chief justice had advised with the king's 'counsel, of the ways of compassing his 'death; and that a paper, containing the 'result of that consultation, had been seen 'upon Mr. Attorney's table.' He never told me who that person was; but, if you please to call Mr. Owen, who was his solicitor, sir Wm. Williams, Mr. Pollexfen, Mr. Rotheram, Mr. Benchfild, Mr. Thompson, and Mr. Hallis, who were his counsel, perhaps they may give a better account of that circumstance; but, sure I am, they can give your lordships a full account of the irregular proceedings of his prosecutors.

"He complained also against the solicitor general, for misrepeating the evidence on both sides, to mislead the jury; to have represented the lord Howard's frequent attestation of God, that he knew of no Plot, believed there was none, and took that spoken of to be an invention of the priest, only as unwillingness to confess it, and his many perjuries as a mark of the truth of that he had then sworn, and, by such constructions, to drive the jury headlong into a verdict; and, as Mr. Sidney complained of the solicitor general in that particular, so he did much more of the chief justice, in misrepresenting the evidence more than the solicitor had done. And, after his trial, colonel Sidney was informed, 'that the lord chief justice, not satisfied with directions given in public, he had been further pleased, when he retired upon pretence of taking a glass of sack, to follow the jury, and give them more particular instructions.'

"He complained also of the judges and jury, for receiving such an evidence as the lord Howard; against whom he had many exceptions, as appear in his trial, and in his dying words which he left with me, written by his own hand, which I am ready to produce, and, if your lordships please to give me leave to publish them, it shall be done speedily; which, I presume, may give great light and satisfaction to your lordships and to the world, of the injustice done to him.

"He further complained, that the judges and jury did receive, for a second evidence, some scraps of papers, written many years before, in answer to Fillmer's book, as if they could have any relation with what was pretended then at his trial; he earnestly desired, that those papers produced against him, might all be read in the Court, that they might judge whether they were good or bad, true or false; which was refused.

"After this trial, colonel Sidney, considering their irregular proceedings, applied himself to the king by his petition, which I presented myself, representing to his majesty the wrong he thought was done him; but could obtain no relief, being referred to the same judges of whom he complained.

"Of these he did complain, and many other particulars that would be too tedious to relate, and I should fear to do him wrong in not setting them forth as they ought to be; therefore must refer to his Apology, which he delivered me before his death, and then told me, 'He was persuaded that his death would be 'called in question; and so left me those 'papers, as a testimony to the world of the 'irregular proceedings his prosecutors made 'use of to destroy him.'

"Decem. 11th, 1689. "DUCASSE."

The EXAMINATION of Mr. RICHARD WYNN, taken the 11th of December, 1689.

"This Examinant saith, That he was solicitor to colonel Sidney; and that, presently after his trial, the lord chief justice sent him prisoner to the King's Bench, for saying, 'that the jury were a loggerheaded jury; and 'that they had not evidence sufficient to find 'such a verdict, or that they found a verdict 'contrary to evidence.'

"And this Examinant saith, That colonel Sidney excepted against several of the jury; against some, as not being freeholders; and against others, as being in the king's service, and receiving wages from his majesty.

"This Examinant saith, That he was at colonel Sidney's trial, to write short-hand, and he was reproved by the Court for speaking to the prisoner: Mr. Sidney put in his plea into Court, but did not insist upon it; the foul draught of which he shewed to this committee."

The EXAMINATION of Mr. SERJEANT ROTHERAM, taken the 11th of December, 1689.

"This Examinant saith, That he with others was of counsel for colonel Sidney; and that, by the persuasion of Mr. Bamfield, he drew a plea for him, which colonel Sidney at his trial threw into Court, and prayed it might be read.

"This Examinant saith, That it was to desire the distinguishing of the treasons laid in the indictment, and quoted the three acts of treason. But the Court told him, 'That, if 'the Plea had any slip in it, he must have 'judgment of death pass on him immediately.' After this, he pleaded Not Guilty.

"This Examinant saith, He prayed a copy

of the indictment, which he challenged as his due; but the Court refused it him.

"This Examinant saith, That, after he was found Guilty, he told him, 'That they proved 'the paper which they accused him of, for 'being his hand-writing, by a banker, who had 'only once his hand to a bill;' and to that he quoted the lady Carr's case, in the King's Bench, in Trinity Term, 1669, wherein it was adjudged, 'That, in a criminal case, it is not 'sufficient for a witness to swear he believes it 'to be the hand of the party; but that he saw 'the party write it:' the words in the case are, 'That it must be proved that she actually 'writ it; and not that it was her hand, *ut* '*credit*.'

"This Examinant saith, That colonel Sidney asked him, with the rest of the counsel, 'Whe-'ther all the book should be read at his trial?' The counsel said, 'It should.' The book was by way of questions, and merely about a discourse of government in general, as far as he could find, after several hours reading in it; for he believes it consisted of about seven or 800 sheets.

"This Examinant saith, He knows nothing of the lord Russell or others; but he saith, Mr. Henry Guy came to his chambers, and asked him, 'Whether he was for the dispensing 'power?' He told him, 'No, he was against 'it; for it was both against law and con-'science.' He saith, he was afterwards made a judge, though he thought it was enough to have hindered any man from being a judge, so freely to declare his opinion as he had done."

The EXAMINATION of Sir AMBROSE PHILIPS, taken the 11th of December, 1689.

"This Examinant saith, That he knows nothing of his own knowledge concerning the three heads mentioned in the order; but says, he was always against the dispensing power.

"This Examinant saith, That Aaron Smith had been his client, and there had been a friendship between them; and therefore, he thought he might have prevailed with him to have declared what he knew; which he thought would have been a service to the public, and withal a service to himself.

"This Examinant saith, He cannot be positive whether Mr. Roger North gave him an order to go to Aaron Smith, or whether he told him, 'he should find an order with the lieu-'tenant of the Tower;' but this examinant saith, he did go to Aaron Smith, and use the arguments a friend might do in those circumstances; and told him, 'he was under an 'obligation to confess what he knew;' and likewise told him, 'he came not to trepan him, 'nor would he discover more of what he would 'tell him than he would give him leave:' but he found him very resolute, and so he fairly took his leave of him, and never came near him more.

"This Examinant saith, That he believes he might say to Mr. North, That he had 'such a power over Mr. Smith as to per-'suade him to tell what he knew;' but he saith, That nobody but Mr. North either persuaded or advised him to go to Mr. Smith."

The EXAMINATION of Mr. NATHANIEL GALE, taken the 11th December, 1689.

"This Examinant saith, That he knows Josiah Keeling; and that he never paid him any money; but, by the persuasion of Keeling's mother, he procured him 100*l.* of one Mr. Wolfe, a merchant, to supply his necessities.

"This Examinant saith, That Keeling gave his bond for it, and paid it three months after, which was after he was become an evidence."

The EXAMINATION of Mr. JERVAS SEATON, one of the lord Russell's jury, taken the 11th December, 1689.

"This Examinant saith, He is a distiller by trade; and that he knows not Burton nor Graham, nor had he discoursed at any time with either of them; he saith, he was empaneled by a summons left at his house by the sheriff's officer.

"This Examinant saith, That he heard nothing of the heinousness of the lord Russell's crime before the trial, nor was he persuaded by any one to attend the trial; but he hath been of juries both before and since that trial; and he saith, he was not treated after the trial, nor dined any where till he came home."

The EXAMINATION of Mr. THOMAS SHORT, Druggist, one of the lord Russell's jury, taken the 11th of December, 1689.

"This Examinant saith, That he knows Burton and Graham by sight; but hath had no discourse with them.

"This Examinant saith, That he was summoned to the lord Russell's trial by a ticket, left at his house by the sheriff's officer; and saith, he was not encouraged by any one to attend there, nor did any one insinuate to him the heinousness of the lord Russell's crime.

"This Examinant saith, That he was not treated after the trial, nor was invited to dinner; he believes he supped at home; and is sure he had no money given him either before or after the trial."

The EXAMINATION of Mr. WILLIAM BUTLER, Hamburgh merchant, one of the lord Russell's jury, taken the 11th of December, 1689.

"This Examinant saith, That he hath seen Burton and Graham, but hath no acquaintance with them; and saith, he presumes the summons for him to attend the trial was left at his house.

"This Examinant saith, That he had no intimation of the heinousness of the lord Russell's crime, nor was encouraged to attend that trial.

"And further this Examinant saith, That, to the best of his remembrance, all the jury were at the sheriff's treat; he is sure it cost him nothing; he saith, it is customary for the sheriffs to treat the juries at quarter sessions; and as for Rouse, he doth not know, whether he was there or not."

The EXAMINATION of Mr. JAMES PICKERING, merchant, one of the lord Russell's jury, taken the 11th December, 1689.

"This Examinant saith, That he was at Mr. Graham's chamber about five years since but knew nothing of the lord Russell's crime before he was of the jury; and he endeavoured to get off it, and was not persuaded to be of it.

"This Examinant saith, That the jury had the usual treat provided by the sheriffs; but knows not whether Mr. Rouse was at it.

"This Examinant saith, He spent some money after supper; but he hath never been of a jury of life and death but that time."

The EXAMINATION of Mr. THOMAS JEVE, haberdasher, one of the lord Russell's jury, taken the 11th December, 1689.

"This Examinant saith, That he saw Burton or Graham about seven years ago, at Mr. secondary Normansell's office, but he never spoke with either of them: he saith, he was summoned on the lord Russell's trial as was usual; but nobody did insinuate to him the heinousness of his lordship's crime.

"This Examinant saith, He was not treated after the verdict; nor doth he know that they had either any dinner or supper.

"This Examinant saith, That he knows not whether some of them went to the tavern and spent their own money, without any other body's paying for them; nor does he remember that Mr. Rouse was with them.

"This Examinant saith, That he never was upon a jury of life and death till then; but he hath been often on the grand jury."

The EXAMINATION of Mr. H. NODEN, one of the lord Russell's jury, taken the 11th of December, 1689.

"This Examinant saith, That he hath dealt in tobacco, but now deals to sea as a merchant, and hath never been in company either with Burton or Graham; but he was summoned to be on the lord Russell's jury, but never heard of his crime before; nor was he encouraged by any to attend the jury.

"This Examinant saith, That he was not treated after the verdict but went directly home; and was never on jury of life and death either before or since."

The EXAMINATION of Mr. ROBERT BROUGH, Linen-draper, and one of the lord Russell's jury, taken the 11th December, 1689.

"This Examinant saith, That he knows Burton, but never cared for his company, because he was a proud man; he saith, nobody discoursed him about the lord Russell's crime before the trial; and he cannot say he was treated after the trial with either a supper or wine; nor was he at any treat among themselves at any time after.

"This Examinant saith, That he hath been often summoned on Juries; but Normansell the secondary was his friend, and used to get him off.

"This Examinant saith, He stood not far from the Lord Russell, and his lordship bid them swear him. He saith, that the jury were about a quarter or half an hour in debating before the verdict; and that Thomas Omby, one of the jury, writ the trial in short-hand, and read it to the jury.

"This Examinant saith, that he hath been since on Webb's and St. John's Juries."

The EXAMINATION of Mr. WILLIAM FASHION, Scrivener, one of the lord Russell's jury, taken the 11th December, 1689.

"This Examinant saith, That he neither knows Burton nor Graham, but was summoned to the sessions by an officer leaving a ticket; and that he knew nothing of the lord Russell's trial till he was sworn; nor was he encouraged by any one to attend it.

"This Examinant saith, He believes that victuals were appointed by the sheriffs for the jury; and he supposes most of his comrades were there; but it was almost cold; he paid nothing, nor knows he that any body else did.

"This Examinant saith, He thinks the officers carried them thither; but he was the last man who went out. He saith, the jury were about an hour before they brought in their verdict."

The EXAMINATION of Mr. THOMAS OMEBY, one of the lord Russell's jury, taken the 13th of December, 1689.

"This Examinant saith, That he was a trading merchant to Barbary and Spain, at the time of the lord Russell's trial; and that he never heard of the lord Russell's crime till he came to the trial.

"This Examinant saith, He neither knows Burton nor Graham, nor was he encouraged by any to attend the jury, but endeavoured to get off.

"This Examinant saith, He knows not the names of the jury; nor whether Rouse was at

the treat, which (as was then said) was usually provided by the sheriff.

"This Examinant saith, He looked then on himself to be worth five or six thousand pounds; and traded till within these three years."

The EXAMINATION of Mrs. JANE MATHEWS, taken the 13th December, 1689.

"This Examinant saith, That she can say nothing but what is relating to her father; and as to him, she saith, That he was seized and brought from on board the yacht by the lord Godolphin's warrant, and sent to Newgate; and though the king was petitioned that he might have counsel, yet none could be admitted to him, nor any friends to speak with him but in the presence of a keeper.

"This Examinant saith, That sir William Williams was his counsel; and her father was all the time kept close prisoner, and had one chain on about a fortnight; she saith, Mr. Richardson beat her sister, whilst she was on her knees, asking her father's blessing.

"This Examinant saith, She was at the bar when her father was at the king's bench bar; he demanded his trial, and also the benefit of the statute of outlawries, as likewise counsel in matters of law; but the court refused him both trial and counsel, after the statute was read: Sir Robert Sawyer said, 'He hoped 'now that sir Thomas would say, he rendered 'himself?' To which her father replied, 'That 'he had been kept a close prisoner, and there'fore could not do it; but now he did render 'himself.'

"This Examinant saith, That Jefferies said, 'He should have done it before.' Her father replied, 'He did it then, and that that 'was within the time of the act.' Jefferies told him, 'They had nothing but the outlawry to 'go upon; and that he was not within the be'nefit of the act.'

"This Examinant saith, That her father demanded the benefit of the law; the lord chief justice told him 'he should have that to the 'full;' and immediately ordered his execution; and the night after his sentence, he lay chained. She saith, That Withins, Holloway, and Walcot, were his three other judges.

"This Examinant saith, That she questions not but to prove the lord Howard perjured; for her father said, in the speech he left behind, 'that if he had been tried, he could prove those 'base reflections the lord Howard made of him, 'to be all lies and notorious falsehoods, and that 'by ten gentlemen, and all the servants of the 'house; for he was at dinner that day at Spar'row's with the lord Howard and others, who 'swore he was not there.'

"This Examinant saith, That when her father in court said, 'My blood be upon you!' (meaning the lord chief justice) Jefferies said, 'Let it, let it; for he was clamour proof.'

The EXAMINATION of Dame KATHERINE ARMSTRONG, taken the 13th December, 1689.

"This Examinant saith, That she went to the cursitor of London; to demand a writ of error for sir Thomas Armstrong after his trial; and told him, she was ready to pay him all due fees; but he refused, and told her, 'she must 'go to the attorney general.'

"This Examinant saith, She doth not remember that she went herself to the attorney; but her daughter waited on him, and she told her, he refused it likewise.

"This Examinant saith, That then she demanded it publicly in the court of chancery, of the lord keeper North; but he told her, 'it 'was not for him to give it, but the king:' Whereupon she desired his lordship to take notice, 'That she demanded it; and told him, 'that he did not know how soon it might be 'another body's case.'

The EXAMINATION of Mrs. KATHERINE ARMSTRONG, taken the 13th of December, 1689.

"This Examinant saith, That she was not at the bar, when sir Thomas Armstrong was tried, only her sister Mathews was there; but she knows that captain Richardson used her father very ill, and made him lie with a chain on one leg.

"This Examinant saith, That Richardson would not suffer her to see her father alone; but was very rude to her, and struck her in such a manner, that she had so sore a breast with the blow, that she could not put on boddice in three quarters of a year; it was when he carried her father to the council, and she being in the outward room to the council, went only to ask her father's blessing.

"This Examinant saith, That she waited on her mother to the cursitor of London, to demand a writ of error; but though they were ready, and proffered to pay all that could be demanded, yet it was refused. She went also on the same errand to the lord keeper North, Mr. Attorney General, and the lord chief justice Jefferies; but could get none.

The EXAMINATION of Dr. OWEN WYNNE, taken the 13th December, 1689.

"This Examinant saith, That he knows nothing concerning the several heads in the order; but he hath heard that instructions were given by Mr. Brent and others, as to the regulating of corporations; and that John Williams, Lewis Owen, and William Wynne, were employed, as he hath heard, about regulations in Wales; the last was one that acted under them.

"This Examinant saith, That a Committee met at the lord Sunderland's office about it; but he was under the lord Middleton.

"This Examinant saith, he knows not who were the public assertors of the dispensing power, but as he read in print; he heard that the judges met about it, and only one was against it; he saith, several warrants passed the secretaries office, for new charters to corporations."

The EXAMINATION of Mr. ROGER NORTH, taken the 13th of December, 1689.

"This Examinant saith, That he procured no order for sir Ambrose Philips to go to Aaron Smith in the Tower; nor doth he believe that ever he had any discourses about that matter.

"This Examinant saith, He is confident he never delivered him any such order; nor did he tell him that he should find any such order at the Tower; nor, to the best of his remembrance, did he ever know that there was any such order.

"And this Examinant saith, That sir Ambrose Philips doth mightily misremember, if he says he had any such order from him: for, if he had procured him such an order, he could not but have remembered it, and verily believes he should have remembered it, which he doth not; and he saith, that, to his knowledge, he never meddled in such matters."

"The Marquis of Halifax was lord privy seal from October, 1682, to February 1684, in which time sixty-six charters were granted, whereof one passed *immediate*. No dispensations passed in that time. In that time forty one pardons, with Non Obstantes and clauses with dispensations, were granted, whereof three passed *immediate*.

"The earl of Clarendon was lord privy seal from February 1684 to December 1685, in which time ninety-four charters were granted, whereof seventeen passed *immediatè*. No dispensations passed in that time. In that time ten pardons, with Non Obstantes and clauses with dispensations, were granted, whereof two passed *immediatè*.

"The lord Tiveat and others were Commissioners of the privy seal from December 1685 to March, 1686-7, in which time twenty-six charters were granted, which passed the office in the usual manner. Dispensations, with the penal laws, in that time were eight, whereof one was *immediatè*. In that time seventy pardons, with Non Obstantes were passed, whereof one of them *immediatè*.

"The lord Arundel of Wardour was lord privy seal from March 1686-7 to the 4 of Jac. 2, in which time fifty-six charters were granted, whereof forty passed *immediatè*. Dispensations in that time were thirty-five, whereof three passed *immediatè*. In that time forty-five pardons, with Non Obstantes, passed, whereof twenty five *immediatè*."

Will. and Mary. No. XXIV.

An ACT for annulling and making void the Attainder of ALGERNON SIDNEY, esq;*

Whereas Algernon Sidney, esq. in the term of St. Michael, in the 35th year of the reign of our late sovereign lord king Charles the 2nd, in

* "The purport of some bills,' says Mr. Hatsell," (2 Precedents of Proceedings in the House of Commons, 337) "must necessarily be communicated to the king even before they are presented as Bills for the reversal of attainders or outlawries, and for restitution in blood." And in a Note, he adds, "The Bill to reverse the Attainder of lord Russell came to the House of Lords in paper, with the king's name in the margin and recommending the bill. It was received by the Commons without any recommendation, passed through that House, and had the royal assent as a private bill; and the same proceeding was had in the case of the reversal of Algernon Sidney's attainder. But in the bill for restoring Basil Hamilton in blood, the bill had the king's sign manual at the top of the engrossment, and was presented, so engrossed, and signed by the king, to the Lords. But this was, as the Clerk of the House of Lords told me, a mistake. See the 22d of May 1733. Commons' Journal."

On the first reading in the Commons of the bill for reversing the Attainder of lord Russell, the following debate took place (See 5 Cobbett's Parl. Hist 169).

Mr *Finch.* I see many gentlemens' eyes are upon me. therefore I stand up to give an account of my reasons for the part I acted in that unfortunate business, that may more immediately concern me. [He was taken down to order, not speaking properly against the bill.] I am easily satisfied with the determination of this House. I am sure, my motion is for reading the bill a second time. I stand up only for one clause in the bill. Every gentleman knows, as well as myself, that a conspiracy to levy war against the king, is treason, by the Statute, 25 Edw. 3. [He was taken down again to order.] Give me leave to vindicate myself; what I shall offer will be very short; the reasons I had to urge that point of treason: if law-books have led me in the wrong, I am ready to rectify my opinion, whether to conspire without levying war be treason. It is to conspire the king's death, to keep him in custody till such things be done. It is to conspire, as in the case of Dr. Storey, to invite a foreign prince to invade the kingdom, though nothing followed upon it. It was treason in lord Cobham's case, upon debate of all the Judges, in the Report, 'conspiracy to levy war against the king, was, to conspire against the life of the king.' To throw open all inclosures generally all over the kingdom, was the case of the Miller of Oxfordshire, who was actually executed. Upon this the difference

the court of King's-Bench at Westminster, by means of an illegal return of jurors, and by denial of his lawful challenges to divers of them, for want of freehold, and without sufficient legal evidence of any treasons committed by him; there being at that time produced a paper found in the closet of the said Algernon, supposed to be his hand writing, which was not proved by the testimony of any one witness, to be written by him; but the jury was directed to believe it by comparing it with other writings of the said Algernon; besides that paper so produced, there was but one witness to prove any matter against the said Algernon; and by a partial and unjust construction of the statute, declaring what was his treason, was most unjustly and wrongfully convicted and attainted, and afterwards executed for high treason: May it therefore please your most excellent majesties, at the humble petition and request of the right honourable Philip earl of Leicester, brother and heir of the said Algernon Sidney, and of the right honourable Henry viscount Sidney, of Sheppy, in the county of Kent, the other brother of the said Algernon, That it be declared and enacted, and be it enacted by the King's and Queen's most excellent majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said conviction, judgment, and attainder of the said Algernon Sidney be, and are repealed, reversed, made and declared null and void, to all intents, constructions, and purposes whatsoever, and as if no such conviction, judgment, or attainder had ever been had or given: and that no corruption of blood, or other penalty, or forfeiture of honours, dignities, goods, chattels, lands, tenements, or hereditaments, be by the said conviction and attainder incurred; any law, usage, or custom to the contrary notwithstanding. And to the end that right be done to the memory of the

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stands in books. Any general design (though not immediately against the king's person) to keep him in custody, till he had confirmed any thing that the people would have, is treason; as in the case of Rea and Ramsey, in Rushworth's Collection—To raise war against the king, all the Judges declared it treason. Having said this, it is authority enough for any lawyer to do what I did. Whether the Judges were in the wrong, I shall not determine. [He was taken down again by]

Sir *Henry Goodrick*. It is strange to me to hear that learned gentleman vindicate himself, when nobody accuses him, and thereby to arraign the justice of the Bill for repealing the barbarity of this attainder by this murder. This is not to be suffered.

The *Speaker*. The learned gentleman, from his own vindication in the part he acted relating to this noble lord, has let himself into law-books, against the orders of the house.

Mr. *Finch*. I ask pardon of the house. What I said was not against order, since the house gave me leave to vindicate myself. I only showed you what I had read, and am far from arraigning this noble person; I did not intend it, and have as much respect for this noble family as any body. And now I have vindicated myself as to my proceedings in matter of law, I desire the Bill may be read a second time.

Sir *Henry Capel* For respect to the family and the memory of this noble lord, I am sorry this gentleman did speak; and to vindicate the memory of this noble lord, read the bill presently. He has cited book-cases to justify his proceedings, &c. which is properly at a second reading. I am surprized at this gentleman's proceeding, and am sorry he has proceeded so far.

Sir *Wm. Pulteney*. I have as much honour for this person, and noble family as any body, but I would keep up order. I would not have the Bill read a second time now, but to-morrow. This learned gentleman did make a vindication of himself. I will not undertake to answer him presently; I may have occasion to answer him to-morrow.

Sir *Robert Howard*. I cannot name lord Russell without disorder. I would neglect all things to read this Bill a second time. Perhaps the learned gentleman may tell us how large the law is then; it is a sufficient thing to name that noble lord. I am not able to say any more; but pray read the bill.

Sir *Tho. Lee*. This Bill declares, 'that the law-books the learned gentleman has quoted were wrong;' and if he doubts it, the reading it a second time will set that part right.—The Bill was read a second time.

Mr. *Boscawen*. I have hearkened diligently to the learned person's Law-cases. By the 25th of Edw. 3. we are Judges here of the true intent of that statute; and I would have it read [which was done]. I observe, by that statute, the abridging treason certain, which was before uncertain, for favour of the subject. It seems to me strange, if compassing the death of the king should be treason, and levying war, in another place of the statute: if that be false, it must be taken out of the bill. To me it seems to be a great wresting of the law. It seems to be a transcendent wresting of the law. pray read the bill a third time.

Sir *Tho. Clarges*. I think the Bill is carefully penned, and I think the most that lord Russell could be guilty of, was but misprision of treason, war being not actually levied.

Sir *Tho. Lee*. If there be no objection against the Bill, it need not be committed.

Sir *Tho. Clarges*. In one clause of the Bill there may be two or three words left out. It is said, 'It is at the request of the earl of Bedford and lady Russell only.' The justice of the nation is greater to you than on any particular person's inducement. This Bill is not *ex gratia*, all the nation is concerned in it. When it is *ex gratia*, it ought to be signed by the king.—The Bill was ordered to be committed.

said Algernon Sidney, deceased, be it further enacted, That all records and proceedings relating to the said attainder, be wholly cancelled, and taken off the file, or otherwise defaced or obliterated; to the intent that the same may not be visible in after ages: And that the records and proceedings of and to the said conviction, judgment, and attainder, in the said court of King's-bench now remaining, shall, and be forthwith brought into the said court, this present Easter Term, and then and there taken off from the file and cancelled.

REMARKS on Colonel ALGERNON SIDNEY's Trial. By Sir JOHN HAWLES,* Solicitor General in the Reign of William the Third.

THE lord Russell being executed, and the same day what was called his speech being published, than which, nothing in print was so eagerly accepted or sought after, which shewed the inclination of the people, there was some respite for quieting the minds of the people; but it was not to stop there, as Colledge said; and therefore colonel Sidney (who was talked to death under the notion of a commonwealth's-man) was, the 7th of November 1683, brought to Westminster to be arraigned on an indictment of high treason. The indictment at the time he came to the hall, was so far from being found by the grand jury, that it was not so much as presented to them; but the king's counsel, who had packed the jury, knew well enough that it would be accepted, that is, found upon sight by the jury, without any consideration; which was accordingly done, and colonel Sidney thereupon arraigned The indictment was for designing to depose the king, and to persuade the king's subjects to rebel; and that he did write a certain libel, wherein it was contained, that he (meaning king Charles the second) is subject to the law of God, as he is a man; to the people who made him such, as a king, &c. To which indictment he would have put in some exceptions, exprest in a parchment in his hand, but was told by the court he must either plead or demur, and upon no other terms exceptions could or ought to be admitted; after which he pleaded not guilty.

The 21st of November he was tried, at which time he insisted to have a copy of his indictment, as he had done when he was arraigned; but was both times denied. The first witness against the prisoner was Mr. West, against whom colonel Sidney objected, because he was not pardoned; but it was answered by the court, that he was a good witness in my lord Russell's trial, and therefore should be in that. Then colonel Sidney desired Mr. West might speak nothing but what he knew of colonel Sidney; but was answered by the court, he might give evidence of a plot in general, though colonel Sidney was not concerned in it; and it was called sir William Jones's law. Then Mr. West went on, and gave evidence of what colonel Rumsey, Mr. Nelthorp, and Mr. Ferguson told him of colonel Sidney; but of his own knowledge he could not say any thing of the prisoner. Rumsey gave a like evidence he had done in my lord Russell's trial, with an addition of what Mr. West and Mr. Goodenough told him; Keeling gave evidence of what Goodenough told him; all which the court agreed was no evidence against the prisoner. Then the lord Howard gave the like evidence, from the middle of January to that time, as he had done in the lord Russell's trial, saving that he said the earl of Shaftesbury was brought into the cabal, who was not mentioned before; and save that he said the meeting at my lord Russell's was about a fortnight or three weeks after the meeting at Mr. Hampden's; whereas in my lord Russell's trial, he says it was about ten days after the meeting at Mr Hampden's house: and here he makes two notable speeches for Mr. Hampden at the opening of the consult, both which he had forgotten at my lord Russell's trial, nor could remember at Mr. Hampden's trial, though in the last he was led by a great many questions to put him in mind of them. After his evidence given, colonel Sidney was asked, whether he would ask the witness any questions? Who answered, he had no questions to ask him; whereupon the attorney-general said, 'Silence——You know the proverb.'

The record of the lord Russell's conviction and attainder was given in evidence. Sir Andrew Foster swore sir John Cockram and the two Campbells came to London. Sir Philip Floyd proved the seizing of some papers in the prisoner's house, and he did believe the papers shewn in court to be some of them. Sheppard, Cary, and Cook swore the writing produced was like the prisoner's hand-writing. The attorney-general desired some part of the writing should be read; the prisoner desired all of it might be read, but was answered by the court, that the attorney must have what part of it he would to be read, and afterwards the prisoner should have what part of it he would to be read; but he persisted to desire all of it should be read. Then the writing was read (which was plainly an answer to a book, but what book, was not mentioned) in which the right of the people was asserted. The earl of Anglesey gave the same evidence for the prisoner, of the lord Howard's speaking of my lord Russell, and the plot, as he had done in my lord Russell's trial. The earl of Clare said that the lord Howard, after colonel Sidney's imprisonment, said, if he was questioned again, he would never plead; the quickest dispatch

* See his Remarks at the end of the Cases of Fitzharris, Colledge, lord Shaftesbury, the City of London, and lord Russell.

was the best, he was sure they would have his life; and speaking of the primate of Armagh's prophecy, he said, the persecution was begun, and he believed it would be very sharp, but hoped it would be short; and said, he thought colonel Sidney as innocent as any man breathing, gave him great encomiums, and bemoaned his misfortunes; and as for col. Sidney's papers, he said, he was sure they could make nothing of them. Mr. Philip Howard said, the lord Howard said it was a sham-plot; Dr. Burnet gave the same evidence as he did in my lord Russell's trial. Mr. Lucas gave evidence, that the lord Howard said he knew nothing of col. Sidney's being in any plot. The lord Paget gave evidence to the same purpose. Mr. Edward Howard gave evidence to the same purpose. Tracy and Penwick gave evidence to the same purpose. Mr. Blake testified, that the lord Howard said he had not his pardon, and could not ascribe it to any other reason, than that he must not have it till the drudgery of swearing was over. Now to review what hath been said, it is strange to see what a progress was made in the resolutions of points of law, to take away a man's life; so say it in col. Sidney's words, as if the court and counsel thought it their duty to take away a man's life any-how. Mr. West, and several others, are admitted to give evidence by hearsay against the prisoner, and their evidence summed up, and urged as evidence to the jury; and the reason given for it was, that he was admitted a good witness of a like matter, in the lord Russell's trial; which, besides that it was not true, for it was rejected in that trial, as it appears it was in the print, yet if he had been admitted, of no authority, as col. Sidney said, because, perhaps, he was not excepted to. Of a like stamp is the evidence of the conviction of the lord Russell; though I agree the lord Russell's conviction was as good evidence against col. Sidney, as the earl of Essex's murder was against my lord Russell, and no better. The same may be said of Rumsey, Keeling, Forster, and Atterbury's evidence. Against the lord Howard's evidence there were the same objections as in the lord Russell's trial, with the addition of several other persons testifying he said he knew not, nor believed any thing of the matter; and that he could not have his pardon, till he swore others out of their lives, which in truth was the sense of his expressions.

The king's counsel indeed had thought of something since the trial of my lord Russell, to palliate the matter of the lord Howard's sayings, (for they leaned hard upon his reputation, and looked as if he would perjure himself at the expence of some persons lives, as his words are in the lord Russell's trial). Would you, say they, have had him confessed the matter to those persons to whom he had denied it?

I think there is a difference between confessing and denying. Who asked him the question? What did it avail him to deny it to the persons testifying against him; and therefore when he voluntarily said a thing untrue, unasked,* not provoked or compelled to do it, and which could do him no good, it was good evidence of his untruth, and that no credit ought to be given to what he swore.

As for the last part of the evidence, which was about the writing, both the indictment and the evidence was defective.

As for the evidence, if the subject matter of the writing had been evidence of treason, the indictment ought to have expressed that he published it, which the indictment in this case did; and upon good reason, which was, that the jury might be put in mind, that the publishing of it was necessary to make it known; whereas they very well knew that the evidence would not, nor did come up to it. This was the first indictment of high treason, upon which any man lost his life, for writing any thing without publishing it; for in Fitzharris's indictment, he was charged with publishing his libel; and so in all other indictments for writing, and upon good reason: for this being made an overt act of treason, it must be an evidence of a design to kill or depose the king, or the like; and as the consequence of what the writing contained, which was, that the power was in the people, &c. being in its nature no other, nor urged by the king's counsel to any other intent than to corrupt the subjects minds, could not be evidence of such matter, unless proved he had writ and published it, whereof the last was not pretended to be proved.

That it was necessary to be expressed in the indictment, and proved at the trial, appears by the resolution of all the judges of England in Hugh Pine's case, reported in Cro. Car. fol. 117,† at a time when prerogative run pretty high; wherein, besides the resolution that no words charging the king with any personal vice was treason, there is the case of one Peacham, in the 33d of Henry the Eighth, cited, who was indicted for treason, for treasonable passages in a sermon never preached, nor intended to be preached, but found in writing in his study; he was found guilty, but never executed; for many judges at the time were of opinion it was not treason, as the book says: which I think, according to the evidence here given, was the express case of col. Sidney, admitting he writ the book produced, and that the passages in it were treasonable.

And as this indictment was an original in the particular before mentioned, so it was a second of an innuendo indictment of treason; Fitzharris was the first. The prosecution against Car, as I remember, was an information, and judgment arrested after a verdict, because it was

* See some casuistry of Dr. Johnson's, respecting a voluntary declaration, by Mr. Burke, that he was not the author of the 'Letters of Junius,' in Boswell's Life of Dr. Samuel Johnson.

† See it in this Collection, vol. 3, p. 359.

by innuendo, of which no precedent could be produced; and although in actions for words it was permitted, yet in criminal matters, being penal, it was resolved it ought not to be permitted, and certainly much less in treason: and as this indictment was an original in one part, and a second in another, the evidence on it was an original in another part, which was proving the book produced to be col. Sidney's writing, because the hand was like what some of the witnesses had seen him write; an evidence never permitted in a criminal matter before. The case of the lady Carre was well cited by col. Sidney, against whom there was an indictment or information of perjury; in which it was resolved, that comparison of hands was no evidence in any criminal prosecution: And it must be owned, that at that time, besides Keeling and Twisden, there then sat in that court sir Wadham Windham, whom all will own to have been the second best judge which sat in Westminster hall since the king's restoration: and if it be not evidence in a prosecution of misdemeanor, much less in treason, as col. Sidney said; which inference, besides the reason of the thing, is backed by the authority of my lord Coke.

But admitting col. Sidney wrote that book, and published it; yet if it were not done with a design to stir the subjects up into a rebellion, but was writ and published only 'disputandi gratia,' as the import of the books shews plainly it was, it was no more treason, than the discourse between Blague and Mate Lee about taking the Tower was. And suppose it was wrote with that design, yet it not appearing when it was writ, how could a jury, upon their oaths, say it was done with a design to raise rebellion against king Charles the Second, when for aught appeared, it was writ before he was king, or thought of? It might, for aught appeared, be writ in king Charles the First's time, or Cromwell's time, and designed against either of them, or any foreign prince, and therefore could not be treason against king Charles the Second.

The evidence was an original in this particular also; it was the first time that ever a particular expression in a writing was given in evidence against a man in treason, without reading the whole writing, and for a very good reason given by the jury in Fitzharris's case, which was, That there might be something in the writing, not expressed in the indictment, which may explain the clauses in the indictment so that they may bear another construction: and in that trial it was agreed the whole writing ought to be read, and was read accordingly; and it was the duty of the court to have ordered it, whether the prisoner or jury had desired it or not, as they are upon their oaths to do right; but in col. Sidney's case, when pressed by him, it was denied; only some particular passages he might have read if he would, which he did not accept, upon a very good reason which he gave, which was, that he knew not the passages of the book, or at least he did not remember them, and therefore could not call for them. 'Tis true, that practice in civil matters is allowed to save time, where the mischief is not very great; because of a passage in a deed or writing, material for either party, omitted in reading, the matter may be brought about again; but in criminal, much less in capital prosecutions, they cannot be, unless a way can be found to bring a man to life again.

Almost all the circumstances of this trial are originals; the summing up of the evidence against him was barbarous, being invectives, and no consequences. It was said he was not only guilty of the practices he was accused of, but that he could not have been otherwise, because his principles led him to it; and it might with as good reason have been urged, that he not only was become, but was born a traitor. The last matter remarkable in the trial, was that of an overt-act, of which the court said it was resolved by all the judges of England, that if I buy a knife of J. S. to kill the king, and one witness prove I bought a knife, and another prove I bought it for that purpose, it is two witnesses of an overt-act within the statute of Edward the Sixth.

It were fit to know who the judges were who gave that resolution, if it were but for the authority of the case; for I doubt the reason of it will convince no man: They might as well have resolved, that eating or drinking, or the most ordinary acts of a man's life, is an overt-act of high-treason.

The law hath taken that care for the evidence of high-treason, which it hath not done in any other case, that it must be proved by an overt-act, proved by two witnesses. One would think at the first sight of the statute, that there should be two witnesses to the same fact; but that hath been adjudged otherwise, yet still it was resolved there must be two witnesses: but if this resolution be law, it is plain there needs but one. 'Tis true, if a man does an act for which he can give no reason, as placing a mine of powder in a place the king usually passeth over, or planting a piece of cannon to shoot at a place the king usually passeth by, if he cannot give a credible reason why he did it, and another swears the purpose of the thing, it is two good witnesses within the act.

It hath been said, if a man be bound to his good behaviour, and wears a sword, it is a breach of the good behaviour; and perhaps, heretofore, when swords were not usually worn but by soldiers, it might be so, because it struck a terror in other people as much as a blunderbuss, or the like unusual weapon; or the going armed in a coat of mail, for any person but a soldier, doth at this day. Yet no man will say that, now swords are usually worn by all sorts of people, it is a breach of the good behaviour; and so that which heretofore was a crime, by custom now is become none. It is therefore the unusualness and the unaccountableness of the circumstance make it an

evidence, which cannot be assigned as a reason in the overt-act mentioned.

This last thing I take notice of, is, that col. Sidney refused to ask the lord Howard any questions; from whence was inferred, that he assented to the truth of the matter sworn: but it is well known, 'tis no prudence to ask a thorough-paced witness a question; in Mr. Hampden's trial, his counsel refused so to do for that reason.

The next who fell a sacrifice, according to Colledge's prophecy, was James Holloway; he was outlawed, and taken beyond sea; and being induced with promises of life, to accuse himself of things (whether guilty or not) enough to make good an indictment of high treason against him, it was indeed generously offered him that his outlawry should be set aside, and he have the liberty to be tried, and defend himself as well as he could: but knowing that what he had said since he was taken would be brought in evidence against him, he refused his trial; and because he would not purchase his pardon at the expence of innocent men's blood, by accusing others of what he did not know they were guilty (if his dying speech is to be believed) he was executed.

I should not have mentioned this, but for the sake of the next person's case, which was sir Thomas Armstrong's, who was outlawed for high treason, when he was beyond sea; he was taken and brought to the King's-bench bar.

HISTORICAL PARTICULARS, relative to the Proceedings against Persons accused of Participation in the RYE-HOUSE CONSPIRACY, and other treasonable Designs about this Period.* [Now first printed from the MS. "Brief Historical Relation," &c. of Narcissus Luttrell, in the Library of All Souls' College, Oxford.]

"May 3, 1683. The lord Grey was apprehended by a messenger, for that a considerable quantity of arms, to the number of 80 firelocks, were found in his house; but since he is discharged.

"June 23rd. One Mr. Robert West, a lawyer, of the Middle Temple, and formerly of Gray's-Inn, surrendered himself to sir George Jefferys, serjeant at law, and was examined as to this new Plot, and from thence carried to Hampton Court and examined in council.

"Also came out a Proclamation by his majesty, with the advice of his privy council, for the apprehending col. John Rumsey, Richard Rumbold, malster, Richard Nelthorp, esq. Nathan. Wade, gent. capt. Walcot, Wm. Thompson, James Burton, and Wm. Hone, joiner, for conspiring the death of the king and the duke of York, promising the reward of 100*l.* to any one who shall take each of the said persons.

"24th. Late in the evening, col. Rumsey was brought to Mr. Secretary Jenkins's office, in order to be examined.

"26th. Also col. Sidney, brother to the present earl of Leicester, major Wildman, and the lord Russell, son to the earl of Bedford, were sent to the Tower, upon account of this New Plot, and committed close prisoners.

"The same day, also, the officers of the militia for the city of London went from house to house to search for arms, and it is said at some places quantities were seized.

"29th. Came out a Proclamation by his majesty, with the advice of his privy council, for the apprehending of James duke of Monmouth, Ford lord Grey, sir Thomas Armstrong, and Robert Ferguson, for conspiring the death of the king and the duke of York, to levy men, and make an insurrection, promising a reward of 500*l.* for the taking of any of them.

"His majesty returned from Windsor about the 20th to Whitehall, where the council sits frequently, concerning this Plot, and the duke of York sits in council since this too; some persons believed it to be a sham, though most the contrary; however all persons are startled at it, the discoveries thereof being kept very private, as also the persons that have discovered it; however his majesty is so sensible thereof, that he hardly goes out but with a strong guard, the militia and trained bands of London, have been constantly out, two or three companies.

"Watch every night, and have done since the first discovery, and all his majesty's officers (military) have strict orders to keep to their respective commands, and the inhabitants of London and the Liberties thereof have had orders to be ready, with musket, powder, bullet, and match, at half an hour's warning.

"30th. One Lee, a dyer, was taken on account of this Plot, and Robert Blandy, esq. a gentleman of the Temple.

"The same day, also, Charles Umfreville, esq. was taken by a messenger and examined that night by the council for having three muskets, a pair of pistols, and an armour made of silk, found in his house, but the next day he was bailed, by Mr. Justice Withens, by two persons in 500*l.* to appear the first day of the next term at the King's Bench Court.

* From which it will be seen that the number of State Prosecutions instituted at the time of the Rye-House-Plot, and shortly afterwards, was extremely great.

"Hone, the joiner, who was in the Proclamation, and taken some time since at Cambridge, was this day also brought to town, carried to Whitehall, and there examined, but the particulars of any of their confessions we are yet ignorant of.

"July 1st. The lord Anglesey's house, in Drury lane, was searched for the duke of Monmouth; the same day, also, chancellor Thompson's house, in Essex-street, was searched for him.

"2nd. Was presented an address to his majesty, from the lord mayor, aldermen, and commons, of the city of London, in common council assembled, congratulating his majesty and the duke of York upon the discovery of the late conspiracy, assuring him of their lives and fortunes in defence of the government in church and state.

"3rd. Mr. Thompson's house was searched again for the duke of Monmouth.

"2nd. 3rd. The officers of every respective parish went to the inhabitants houses in London and the suburbs, to take the names of every lodger, in order to return the same to the justices of the peace.

"The French and Spanish ambassadors have waited on his majesty, and assured him, from their masters, that if any of the conspirators in the late Plot, come into their dominions, that they shall be delivered.

"4th. Several persons were taken on account of the Plot, as Aaron Smith, a solicitor; and in Essex, John Rouse; one Bourne, a brewer; and Mr. Mead, a fanatic parson, who were brought to town and committed to prison.

"One Richard Helford, esq. a lawyer, was taken by a messenger, but after discharged on bail.

"Ford lord Grey was taken also upon account of the Plot, but he escaped from the messenger, one Mr. Deering, by his carelessness, and is since gone away and never heard of; the messenger for such his neglect was committed to prison.

"8th. The lord Howard of Escrick was taken on account of this Plot, at his house, at Kensington, in a cunning hole behind a hanging.

"The same day, also, the lord Brandon, son to the earl of Macclesfield, was taken on account of the Plot, and Mr. Hampden the younger, and committed to the Tower.

"One capt. Walcot, a gentleman of 1,000*l.* per ann. in Ireland, is taken on account of the Plot, and being carried to the council, answered very resolutely, that he scorned to take away his majesty's life, being a man unarmed, but that he was to fight his majesty's Guards.

"The goods of Ford lord Grey have been lately seized, for his fine was set on him for the riot at Guildhall, London.

"10th. The earl of Essex was committed to the Tower on account of this Plot; there is also a discourse of Warrants being out for his brother sir Henry Capell, col. Birch, col. Likes, and sir John Borlase.

"Col. Rumsey, some time since taken, as is said, discovered very considerably, but is thought to be a papist; yet it is certain he was very familiar with the late earl of Shaftsbury; Mr. West also makes considerable discoveries, and is said to have his pardon; and the lord Howard ever since his being taken has done nothing else but made discoveries, and is said to be the lord that lay behind the curtain all this while, in order to discover, which makes some hesitate at his confession; and it is said that Ferguson is now at Whitehall, or known there where he is, notwithstanding his being in the Proclamation: time must shew the truth of these things.

"The king of France hath writ to his majesty, congratulating him on the discovery of the late conspiracy, assuring his majesty, that if any of the conspirators come within his majesty's dominions he will send them over.

"The lord Lovelace is taken on account of the Plot, but discharged after on bail.

"The witnesses of this new Plot are Mr. Keeling, an oilman, Mr. West, col. Rumsey, Bourne, the brewer, Mr. Shepherd, a wine merchant, and the lord Howard of Escrick, who, as it is said, will all have their pardons.

"Addresses have been presented to his majesty from the lieutenancy of the city of London, from the society of Gray's-Inn, from the justices of peace and grand jury, at the sessions for the county of Middlesex, from the master, governors and assistants of the Scots corporation, and Westminster, from the justices of peace and grand jury at the sessions for the city of Westminster; from the corporation of the city of Bath, from the town of Kingston upon Thames, from the corporation of Gravesend and Milton, in Kent, and from the borough of Thetford, in Norfolk.

"12th. Began the sessions of Oyer and Terminer at the Old Bailey, where, after some proceedings against ordinary felons and others, the grand jury found these [qu. true] bills against the following persons:

	Witnesses against them
William Hone, joiner	4
Richard Rumbold	4
Richard Goodenough	4
Jame Burton	2
Francis Goodenough	4
William Thompson	2
Richard Nelthrop, esq.	3
Nathan. Wade	3
Robert Ferguson	3
Edward Norton, esq.	3
James Holloway	3
James Lully, of Lincoln's-Inn	3
John Roe, sword-bearer, of Bristol	3

Second Indictment.

John Rouse.
William Blague, a sea captain.

Third Indictment.

Duke of Monmouth Lord Grey Lord Russell Sir Tho. Armstrong Robert Ferguson	Rumsey and Steward.

Fourth Indictment.

Captain Walcott - - - - - - - 4

"Indictments were found against all these persons for high treason, in conspiring the death of the king and the duke of York, subversion of the government, &c.

"12th. In the afternoon, captain Thomas Walcot, an Irish gentleman, of about 1,000*l.* per ann. in that country, came to his trial at the Old Bailey for the said treason; the witnesses against him were four, col. Rumsey, Mr. Keeling, Mr. Bourne, and Mr. West, who all testified very fully as to the Conspiracy, and of the prisoner being concerned therein; that he had been at several consults for the taking of the king, &c. Then a letter of the prisoner's to one of the secretaries was produced, desiring his majesty's pardon, and in requital he would make a full discovery of the whole design; he made but little defence, yet seemed not at all concerned, but confessed he was at some consults, but never consented to the resolutions for taking off the king; so that the jury, after a little time, found him guilty of high treason.

"The next morning, Hone came on his trial, for the same Plot, and acknowledged himself guilty of the Conspiracy, but not of levying of arms; the witnesses against him were Keeling and West, who swore fully to his being concerned therein, and, he making little defence, the jury found him guilty also of high treason, without stirring from the bar.

"About nine that morning, William lord Russell, eldest son to the earl of Bedford, came on his trial; the jury were ordinary citizens of London, of which he challenged about 32 peremptorily, and others for not being freeholders; for which his lordship had Mr. Pollexfen, Mr. Holt, and Mr. Ward, as council assigned him, but the court over-ruled the said challenge; the indictment was for levying of war and rebellion, for conspiring the death of the king, &c. The witnesses against him were colonel Rumsey, Mr. Shepherd, the wine-merchant, and the lord Howard of Escrick, who testified that the prisoner was at several consults at Shepherd's house, and other places, for the raising of men, for making an insurrection, and causing the nation to rise, &c. The prisoner called some to prove what the lord Howard said, in relation to the Plot, and others, to testify his life and conversation. The trial lasted till five, and though there was no evidence against him for conspiring the king's death, yet the jury, after an hour's being out, brought him in guilty generally.

"At six that evening, John Rouse was brought to his trial for the same Conspiracy; and the thing being fully sworn against him, he was found guilty.

"Captain Blague was tried also on the same Conspiracy, for that his part was to seize the Tower, but there being but one witness, the jury found him not guilty.

"The next day, William lord Russell, capt. Walcot, Hone, the joiner, and John Rouse, were brought into court, and had sentence of death passed on them, as is usual in cases of high treason.

"Besides these, there were nine others tried and found guilty for felonious robberies and other crimes.

"And the grand jury, before the sessions broke up, presented the lord mayor with an Address to be delivered to his majesty, expressing their joy for his majesty's deliverance from the said conspiracy.

"The 13th, about nine in the morning, the earl of Essex, prisoner in the Tower of London, upon account of this new Plot, did most barbarously cut his own throat from one ear to the other with a razor: what occasioned it is doubtful; some say the sense of his guilt, others the shame for being accused of such a crime, when his father, the lord Capel, died for his loyalty to the late king: however, the coroner's jury have sat on his body and found him *felo de se*, though some stick not to say it is impossible he should murder himself in so barbarous a manner; and his majesty hath been pleased to give his goods, which were forfeited by his killing himself, to his son.

"Ford lord Grey, who is fled on account of this Plot, was lately seen at Rotterdam, but since gone thence.

"There have been great endeavours used to his majesty for a pardon for the lord Russell, but without any hopes of succeeding, and that as if 50,000*l.* was offered for a pardon, to which his majesty, as is said, should reply, 'He would not purchase his own and his subjects blood at so easy a rate.'

"Ever since the first discovery of this Plot, there have been discourses of a peer's coming in to discover the same, which now proves to be the lord Howard.

"John Booth, esq. eldest son to the lord Delamere, is clapt up in the Tower on account of this Plot, as also major Bremen.

"21st. William lord Russell, being lately condemned on account of this new Conspiracy, was brought in his own coach from Newgate, with a most extraordinary guard of watchmen and the trained bands on each side of the coach and behind; accompanied with Dr. Tillotson, dean of Canterbury, and Dr. Burnet, in the coach; he went very unconcerned to the place of execution, which was at the west end of great Lincoln's-inn-fields, where a scaffold, lined with black, was erected for that purpose; there were many spectators, and numerous guards of the king's horse and foot; he said but little, but delivered a paper to the sheriff (afterwards printed), and prepared his

after praying, for his execution, to which he submitted himself very cheerfully, but Ketch, the executioner, severed his head from his body, at three strokes, very barbarously.

"The same evening came out the Paper, delivered to the sheriffs, in print, which sold most prodigiously, wherein he vindicated his innocence.

"The next day, Dr. Tillotson, Dr. Burnet, and his lordship's chaplain, were sent for before the privy council, and examined about the lord Russell's speech, whether they made it, &c. to which they answered in the negative; however some persons exclaimed very much against Dr. Burnet, thinking him the author thereof.

"The quarters of Walcot, Hone and Rouse, are buried, but their heads are set on these places following: Hone on Aldersgate, Walcot on Aldgate, and Rouse on Guildhall.

"August. Several persons accused to be in the late Conspiracy are fled and not yet taken; Richard and Francis Goodenough, Rd. Nelthorp, Nathan. Wade, Joseph Riley.

"Stephen Lobb and ——— Casteers, both Non-conformist preachers; Hugh Westlack, captain Edward Norton, John Rowe, John Ayliffe, Robert Ferguson, duke of Monmouth, Ford lord Grey, sir Thomas Armstrong, lord Melvine, sir John Cochrane, these two of Scotland, and sir Hugh Campbell (who is since taken) Rd. Rumbold, the malster, William, his brother, Wm. Thompson, James Burton, Joseph Elby, Samuel Gibbs, John Atherton, and Francis Charlton, esq. who was since taken at Oxford.

"Mr. Casteers and Mr. Lobb, two Non-conformist ministers, accused for the late Fanatical Plot, have been apprehended in Essex, and committed for the same.

"September. The violence and malice of some persons is such, that it hath carried them so far as to charge Dr. Burnet with the composing and making the last speech of the late lord Russel, but this report gains no credit with the moderate sort: however it is said Dr. Burnet is gone over into France, with Mr. Mountague, for his health, since which some have reported he is turned Jesuit.

"9th. Being the day appointed by his majesty's Declaration for a Thanksgiving for his deliverance from the late Conspiracy, was observed accordingly. In some places the chief of their sermons were violent against the Dissenters, commenting on several proceedings of those called the Whig Party, and running down the late House of Commons as being the authors or abettors of this Plot; but some on the other hand, inveighed both against this Plot and the late Popish Plot, taking notice that there was no thanksgiving day for our deliverance from that, though there was for this; and at one or two churches here in town, was given up a Note to the reader to this effect following:

"You hypocrites forbear your pranks,
To murder men and then give thanks;
Forbear your tricks, pursue no further,
For God accepts no thanks for murther."

At night were ringing of bells and bonfires in divers places.

"Oct. 27th. Aaron Smith, sometime since convicted upon an Information for delivering scandalous and libellous instructions, in writing, to Stephen Colledge, to be used at his trial at Oxford, and for speaking scandalous and seditious words in the court, at the said trial, and fled for the same, being lately apprehended and committed to the Tower, was brought this day to the court of King's-bench, to receive the judgment of the court, which was to pay 500*l.* fine, and stand in the pillory for the space of an hour, between 10 and 12, in the morning on Tuesday next, before Westminster-hall gate: and the same time, the Tuesday after, before the Royal Exchange, in London, that he find sureties for his good behaviour for a year, and be imprisoned till this be done; which as soon as the court had pronounced, Aaron replied, 'I thank God for this judgment; his will be done, but I wonder you did not order me on the pillory till doomsday;' so he was committed prisoner to the King's-bench prison.

"Nov. The first week of this term, several persons, committed upon the account of this plot, made their prayers to the court of King's-bench, to be either tried or bailed according to the Habeas Corpus Act, which prayer was accordingly recorded; Major Bremen and some others, committed on account of the plot, are discharged; Lock, the master of the ship who carried over the lord Grey, is bailed, and so is young Braddon, who busied himself in the murder of the late earl of Essex.

"His Majesty hath been pleased to pardon the attainder of the lord Russell, and restore the blood to his issue.

"6th. Mr. Speak was brought to the court of King's-bench, and charged with two informations; the first, for saying the king was as great a Papist as the duke of York; that the duke durst not do what he did, but that the king did animate him; that what Pilkington had formerly said of the duke of York was true, with much other such scandalous stuff; the second was for saying that the earl of Essex was killed and murdered by those that attended on him in the Tower; to both these he pleaded not guilty, and as to the first said it had depended above this half year and he was formerly discharged thereof; and for the latter he wished they would bring him to a speedy trial for it; he was remanded for want of bail.

"The same day, also, Samuel Johnson, minister, pleaded not guilty to an indictment against him for writing a scandalous libel, called 'Julian.' So did John Darby plead not guilty

to an Indictment for printing the late lord Russell's speech.

"7th. Mr. Speak was bailed; but in going home was arrested in an action of Scandalum Magnatum for 100,000*l.* at the suit of the duke of York, and carried to prison for want of bail.

"The same day, also, the grand jury for the county of Middlesex found a bill against Algernon Sidney, esq. for high treason, and presented it to the court of King's-bench. And he was brought by Habeas Corpus presently after from the Tower to the King's-bench bar, where he was arraigned upon the said indictment.

"11th. John Culliford, who printed the 2d part of the Growth of Popery, was charged with an action of Scandalum Magnatum at the duke of York's suit.

"An order of council has been published in the Gazette, prohibiting any person to print the Journals of the House of Commons since his Majesty's restoration.

"Mr. John Armiger, Mr. John Freind, and Charles Bateman, chirurgeon, being committed on account of this new plot, were bailed the 13th at the court of King's-bench.

"14th. Mr. Henry Deerham, who let the lord Grey escape out of his custody, was brought by Habeas Corpus from the Tower, and pleaded not guilty to an indictment against him for the said misdemeanor.

"18th. John Gibbons, the duke of Monmouth's man, who was committed on account of this new plot, was bailed at the court of King's-bench.

"20th. Mr. Johnson was tried at Guildhall, in the afternoon, upon an information for writing Julian the Apostate, of which he was found Guilty.

"John Darby was likewise found guilty of printing a seditious libel called, The Lord Russell's Speech.

"It is remarkable in the proceeding against Darby, first that he put his name to it, and did it not in private: then that there never was any prosecution of any person who printed the speeches of the Popish traitors, tho far more scandalous than this, and then lastly the same thing that Darby printed was printed after by order of the sheriffs of London.

"21st. Algernon Sidney, esq. came upon his trial at the King's-bench bar upon an indictment of high treason, in conspiring the death of the king, endeavouring to levy war, and cause an insurrection in these kingdoms; the jury were a jury of Middlesex, who being called, he took exceptions to several, some that they were the king's servants, others that they were concerned in the personating the lord Russell's Ghost, and the greater part for that they were no freeholders in the county of Middlesex; the two first the Court said were no legal challenges; the latter, which was the most considerable, they over-ruled too, and said it had been resolved so in the late lord Russell's case; to which the prisoner said, If any person might be on the jury, he might be tried by his own groom, and that it was very hard being in a county at large, where there could be supposed no want of freeholders (this worthy to be thought on) so none of his challenges being allowed he was forced to challenge them peremptorily, which he did to the number of 34; but a full jury at last was sworn, and a very ordinary one too; the witnesses were Mr. West, col. Rumsey, and Keeling, who testified as to the general Plot only, that there was an insurrection intended, &c. Then came the lord Howard, who swore particularly as to the prisoner, that they had several meetings, one at Mr. Hampden's, another at the lord Russell's, &c. where the council of six met, and consulted of raising an insurrection, and of the way they should effect the same, that they ordered to send to Scotland to see what the disaffected would do there; and that the prisoner undertook this post, and sent, as he said, one Aaron Smith into Scotland, to whom he gave 60 guineas, to invite several Scotchmen over hither to treat about the same, as the lord Melvin, sir John Cockram, sir John and sir Hugh Campbell, and they were to come under pretence of purchasing lands in Carolina. Then sir Andrew Foster, and Mr. Atterbury, the messenger, testified, that sir John Cockram, the two Campbells and Alexander Monroe came accordingly, and that at the first breaking out of the Plot they absconded. Then the next evidence against him was loose sheets of paper, written as was pretended with his own hand; sir Philip Lloyd testified he seized those papers in the prisoner's study: then three persons were called, Sheapherd, Cook and Cary, who testified they had paid several bills of exchange of Mr. Sidney's, and were never since questioned for them, and did believe the papers to be his hand-writing; then the libel itself was read, containing very anti-monarchical principles, putting the supreme power in the people, and making kings accountable to them, and that they might be deposed: then the last piece of evidence was a copy of the attainder of the late lord Russell: then the prisoner came upon his defence, and desiring to know upon what statute he was indicted, was told upon 25 Ed 3, c. 1, for conspiring the death of the king: then he began to observe upon the evidence, that the three first swore nothing against him; the first that did was the lord Howard, and that if what he said was true, yet he was but a single witness, but the law requires two. Then the other evidence against him was his book; upon this he observed several things; first it did appear to be intended as an answer to sir Robert Filmer's Patriarcha; that it was imperfect, not being completed; that all of it was not produced, and only sentences picked out here and there against him; that it was not proved to be writ by him, but only believed to be his hand-writ upon the similitude of hands; that it was never published, or proved to be shewn to any one person; and supposing it were writ by

him; which he would not grant, it was a very hard construction to make that an overt-act of conspiring the death of the king within that law, and this new Plot, when he said the book was writ many years ago, and they (meaning the judges) had no power to make constructive treasons, when by 25 Ed. 3, it is particularly reserved to the parliament; then he said if he had been guilty of conspiring to raise an insurrection or levy war, it is no high treason within that law, unless an actual war levied; but then there was so little proof or probability of that, that the lord Howard does not give an account of any men raised or listed, no officers, no time nor place appointed: then he called several witnesses, as the earl of Anglesey, earl of Clare, Mr. Phillips Howard, Dr. Burnett, lord Pagett, Mr. Edw. Howard, and some others of his own servants, who all testified that the lord Howard had said, he did believe there was no Plot; that this was a sham designed against the Protestants; that he did believe Mr. Sidney to be innocent, and not the least concerned in such a design; and that he himself knew nothing of it. There was also one Mr. Blake, who testified that lord Howard should say he could not have his pardon until the drudgery of swearing was over; which done, he desired he might have council, to argue several points in law, as that of the challenge to the jury for want of freehold; then whether a conspiracy to levy war was high treason within 25 E. 3, without an actual war levied; then whether this libel was a good witness of an overt-act of compassing the death of the king; then whether they could construe treasons within that law, and whether he ought not to have a copy of his indictment according to 46 E. 3. But as to his points in law the court said there was nothing in them, but overruled them all, denying him counsel, though he earnestly demanded it; as also the reading 46 E. 3, though he much pressed it; and for the evidence, the lord chief justice summed it up, taking a great deal of pains in making the prisoner's objections, and answering them when he had done, and so left it plain to the jury; who went from the bar, and after a quarter of an hour being out, they brought the prisoner in guilty; which done, he desired to have them particularly asked one after another, if they found him guilty; but the Court said it must not be done, so he was remanded under a very strong guard to the Tower.

"The trial began about 10 in the morning and lasted till six in the evening, during which time he smiled several times, and was not in the least concerned even after his conviction.

"21st. Was a trial at bar in the Common Pleas, upon an action de Scandalis Magnatum, brought by the duke of Beaufort against sir Trevor Williams, of Monmouthshire, for false and scandalous words, the jury found for his grace, and gave 10,000*l.* damages.

"24th. The duke of Monmouth surrendered himself to secretary Jenkins, and the next day was before the council; his coming in has surprised most people: some think he has not been out of Whitehall all this while.

"26th. Algernon Sidney, esq. was brought from the Tower to the King's-bench bar, where, after his exceptions to several things that past at his trial, and some reflections on the court for their hard usage of him, and desiring to be heard as to some points of law in his case, at last sentence of death was passed on him, as is usual in cases of high treason.

"The same day, also, Henry Deerham, the messenger, that let the lord Grey escape, was brought from the Tower to the Court of King's-bench, and desired to retract his former plea of not guilty, and pleaded guilty to the indictment against him, for that misdemeanor, and was bailed out.

"The same day one John Gutch, of the city of Wells, convicted last assizes of speaking seditious words, as that the king was accountable to the people, &c. was sentenced to pay 200*l.* fine, and be imprisoned till payment; to stand in the pillory on a Saturday, at Wells, for an hour, between 12 and three, and be bound to his good behaviour.

"27th. The grand jury of Middlesex found a bill of indictment against Mr. Hambden, junior, for great and high misdemeanors.

"Dec. 5th, was an attempt made on the king in St. James Park, by one Johnson, a crackt-fellow. The duke of Monmouth since his coming in, hath been mightily caressed at court, to that degree that some persons have thence imagined there was no Plot; however he has procured his own pardon since his coming in; and got a sum of 6,000*l.* given him by his majesty; however his majesty is lately distasted with him (and some say it is because he would not sign a narrative or declaration of the Plot): time must shew the truth hereof, but he is forbid to come any more to Whitehall.

"7th. Algernon Sidney, esq. was brought from the Tower to the place appointed for his execution, on Tower Hill; where a scaffold was erected for that purpose, upon which he came about 10 in the morning, and continued for near a quarter of an hour, during which time he made a short prayer, and then laid his neck upon the block, and the executioner beheaded him at one blow.

"It is remarkable that he had no minister with him, nor any of his relations, nor did he seem in the least concerned, and made no speech on the scaffold, but gave a paper to the sheriff.

"The paper which col. Sidney delivered to the sheriff at the place of his execution is at last printed by order of the two sheriffs: it was said at first to be ordered to be burnt by the hand of the common hangman; there being divers reflections on the witnesses against him, and the way and method of proceeding against him at his trial, not sparing the judges themselves.

"The lord Petre committed to the Tower about five years since on account of the Popish Plot, where he hath ever since remained, is lately dead there.

"1683-4. January 7th. The duke of Monmouth since his being forbid the court, has lodged at a private house in Holborn, and been at his house at Moor Park; but since it is said he is gone into Holland, thinking it not safe to continue here any longer.

"The 28th, in the afternoon, at the Nisi Prius, for the county of Middlesex, George Cawdron, steward to the earl of Clare, came to be tried upon an information for misdemeanor; but two witnesses appearing at the trial to prove the words he was indicted for, the court discharged the jury, and committed Cawdron to the King's-bench prison, and ordered an indictment against him for high-treason.

"Feb. 1st. John Darby being convicted upon an information for printing the late lord Russell's speech, came to the court of King's-bench bar to receive his judgment, which was to pay a fine of 20 marks, and find sureties for his good behaviour for a twelvemonth.

"The same day also sir Samuel Barnardiston pleaded, by attorney, not guilty, to an information exhibited against him for a misdemeanor.

"6th. John Hambden, esq. jun. was tried at the court of King's-bench, on an indictment for a great misdemeanor, in consulting and conspiring with others of an insurrection, and to procure arms and armed men, and to send one into Scotland to invite divers persons to come into the kingdom for that purpose, &c. being a branch of the late Fanatic Plot: the jury was a good jury of Middlesex: there were several counsel on both sides: the evidence against the defendant, was the duke of Monmouth, but he did not appear, though subpœnaed; then the lord Howard, who gave much the same evidence against him, as he did at Mr. Sidney's trial; then there was one Mr. Sheriff, who testified that Aaron Smith lay at his house, an inn in Newcastle, in his way to and after he came from Scotland; then there was one Bell, who went as a guide to Aaron Smith towards Scotland; then sir Andrew Foster and Mr. Atterbury, testified the coming over of those Scotchmen, according to the lord Howard's testimony, and their absconding at the first breaking out of the Plot: the defendant's proof, was, first he called the lord Clare, Mr. Philip Howard, lord Paget, Dr. Burnet, and some others, who testified in general, what the lord Howard had said when this Plot first brake out, before he was taken; that he believed there was no Plot, but that it was a sham; that he knew of none, &c. then Mr. Blake testified his lordship had said he could not have his pardon until the drudgery of swearing was over, but this was taken off, by his lordship's now having his pardon; then Mr. Pelham, sir Henry Hobart, and some others, were called, who testified as to the defendant's life and conversation, that he was a very studious person, much addicted to his book, and not desirous of company; then he called two or three who testified about his being in France from November 1680, till about September 1682, when he returned; as also some who testified as to his resolutions of going thither again the following spring: which done, the lord chief justice summed up the evidence, and the jury retired from the bar for a little while, and brought the defendant in Guilty.

"7th. Mr. Lawrence Braddon and Mr. Hugh Speke, were tried at the court of King's Bench, by a jury of Middlesex, upon an information, reciting the commitment of the late earl of Essex to the Tower for treason, in conspiring the death of the king, &c. and that the 13th of July last he cut his own throat, and was found *felo de se* by Coroner's Inquisition; the said Braddon and Speke did conspire by writing and otherwise to spread a false and scandalous report, that the said earl was murdered by some persons about him, and endeavoured to suborn witnesses to testify the same; the evidence of the king was first the Warder for the Tower, who testified as to his lordship's commitment; then the coroner, and the inquisition taken before him, whereby his lordship was found *felo de se*, was read: then the particular evidence of Mr. Braddon, was by several persons, how busy and solicitous he was to take persons informations, and to examine a little child about ten years old, about a discourse that run through the town, that a bloody razor was thrown out of his lordship's window, and that the cry of murder was heard; and that a servant maid came presently out of that house of the lord Essex and took up the razor and carried it in, and that then it was said the lord Essex had killed himself; then the several informations Braddon had taken in writing, relating to this matter, were read, and some of the informants themselves examined, whose testimony much differed from their informations; then several testified the confident and strange discourses this Braddon frequently used concerning this matter: the evidence against Mr. Speke was only a letter written by him to sir Robert Atkins the elder, and carried by Mr. Braddon, but was seized about him when he was going thither, which contained several expressions in commendation of Mr. Braddon and his zeal, with reflections on this matter; then the evidence was given of his lordship's cutting his own throat with a razor, which was proved by his own servant, a Frenchman, by the warder, by the centinel, and by captain Hawley; the defendant's proof was, first, Braddon pretended he did nothing, but out of his zeal, to have the truth come out: then he called some witnesses to prove, that there was a discourse of the lord Essex being killed, and a razor thrown out, before he concerned himself in it. Speke had little to say against the letter, but owned it to be his hand. So that the jury after a little while agreed of their verdict, and found

the defendant Braddon Guilty of all that was laid in the information, and the defendant Speke Guilty of all, except the conspiring to suborn witnesses. It was strange any man should concern himself in an affair of this moment, on the information of a boy of 10 years old, who had denied all after he had confessed it, and did at his trial, and make all this rout that was about it.

"11th. Mr. Johnson, who was convicted the last term for writing and publishing a seditious book entitled "Julian the Apostate," was this day sentenced by the court of King's-bench, to pay 500 marks for a fine, to find sureties for his good behaviour for a year, to be committed to the King's-bench prison till this is done, and the book to be burnt by the hands of the common hangman.

"12th The lord of Danby came, by Habeas Corpus, from the Tower to the court of King's Bench, which being read and the return filed, his lordship prayed the opinion of the court, and desired that he might be bailed. the judges severally delivered their opinions with the reasons, and concluded all that his lordship ought to be bailed, wh ch accordingly was taken; his lordship was bound in a recognizance of 10,000*l* and the dukes of Somerset and Albermarl, and the earls of Oxford and Chesterfield, his sureties in 5000*l*. each, upon condition that the earl of Danby do appear in the House of Lords the next sessions of Parliament, and not depart without leave of that court

"The earl of Powis, lord Arundell of Wardour, and the lord Bellasis, were likewise brought from the Tower, and the earl of Tyrone from the Gatehouse to the court of King's Bench by several writs of Habeas Corpus, which being read and the returns filed, they prayed by their counsel to be bailed, and the judges did declare, for the same reasons they had given in the earl of Danby's case, these lords ought likewise to be bailed, and the lord chief justice was pleased to say that impeached or not impeached, he thought it all one, and that it was not a favour to bail them, but that in justice and conscience they ought to be bailed long since; and accordingly each of them entered into 10,000*l*. recognizances a piece; for the earl of Powis, the dukes of Norfolk and Beaufort and the earls of Pembroke and Peterborough; for the lord Arundel, the earls of Dorset, Scarsdale, Bath, and Clarendon; for the lord Bellasis, the earls of Aylesbury and Westmoreland, lord viscount Faulconberg, and sir John Talbott; and for the earl of Tyrone, the earls of Roscommon, Mount Alexander and Carlingford, and the lord Annesley; all upon the like conditions, as in the case of the lord Danby."

"The same day, also, the lord Brandon, Mr. Booth, major Wildman, Mr Charlton, Mr. Trenchard and several others, committed upon the account of the Fanatic Plot, and bailed out the last term, were discharged, there being nothing against them.

"The same day, also, Mr. Hambden, lately convicted of a great misdemeanor, came to receive the judgment of the Court, which was that he should pay 40,000*l*. for a fine to the king, and find sureties for his good behaviour during life, and be committed till this is done.

"Mr Deerham, also, the messenger, who let the lord Grey escape, was sentenced to pay 100*l* fine, and to be committed till he do it.

"Mr. Wynn and Mr. Forth pleaded Not Guilty to an information against them, for saying col Sidney's jury were a logger-headed jury, and gave a verdict contrary to evidence.

"14th. Langly Curtis was tried for printing and publishing a scandalous pamphlet called "The Night-Walker of Bloomsbury," of which he was found guilty.

"April, 1684 Mr. William Wright, late alderman of Oxford, appeared the 16th at the King's Bench and pleaded Not Guilty to an information for printing several scandalous and seditious libels

"Robert Lock, the same day, pleaded Not Guilty to an information for clandestinely transporting of traitors, viz The lord Grey

"The earl of Macclesfield hath brought his action of Scandalum Magnatum against sir Thomas Grosvenor and the rest of the grand jury for the county of Chester, who presented him, with several other gentlemen, as persons disaffected to the government

"19th. Sir Samuel Barnardiston being convicted of writing four scandalous letters, came to the court of King's Bench to receive his sentence, which was to pay the fine of 10,000*l* to be bound to his good behaviour for life, and be committed till all this is done.

"21st. James Holloway was brought from Newgate, by Habeas Corpus to the King's Bench bar, and being asked what he could say why execution should not be awarded against him, he being attainted by Outlawry, upon an indictment of high treason for this Fanatic Plot, he desired to have the indictment read, and then Mr Attorney General told him his majesty was pleased to waive the Outlawry, and to let him come to a trial, if he could make any defence: but he said he had confessed the fact already to his majesty, and had no more to say, but threw himself at his majesty's mercy; so the court made a rule for his execution on Wednesday, sevennight.

"The same day also Mr Lawrence Braddon and Mr. Hugh Speke, convicted the last term upon an endeavour to lay the murder of the late earl of Essex upon the government, were brought to the court of King's Bench, to receive their judgment, which was that Braddon should pay a fine of 2000*l*. and Speke 1000*l*. to the King, that they find sureties for their good behaviour during their lives, and be committed to the King's Bench prison till they do it.

"The same day also Langly Curtis, who

was convicted the last term for printing a scandalous libel called the Night Walkers of Bloomsbury, was fined 500*l.* to be bound to his good behaviour for life, to stand in the pillory on Saturday next in Bloomsbury market, and have a paper set upon him signifying his crime, and the libels to be burnt under him.

"30th, James Holloway was executed, being drawn upon a sledge to Tyburn, and there hanged and quartered."

301. Trial of LOWRIE or WEIR, of BLACKWOOD, for Treason: 35 CHARLES II. A.D. 1683. [Now first printed from the MS. Records of the Court of Justiciary of Scotland.]*

CURIA JUSTICIARIÆ S. D. N. Regis, tenta in Prætorio Burgi de Edinburgh, ultimo die Mensis, January 1683, per Nobilem et potentem Comitem Jacobum Comitem de Perth, Justiciarium Generalem, et honorabiles viros, Richardum Dominum de Maitland Clericum, Dominos Jacobum Foulis de Collingtoun, Davidem Balfour de Forret, Rogerum Hog de Harcauss, et Alexandrum Seton de Pitmedden Commissionarios Justiciariæ dicti S. D. N. Regis:

Intran

WILLIAM LOWRIE *of Blackwood:*

INDYTED and accused, That wher notwithstanding be the 3rd act of the first parliament of king James the 1st, and 37th act of his second parliament, and be the nynth act of the twelt parliament of king James the second, and hundreth fourtie fourt act of the twelt parliament of king James the sixt, it is statute and ordained, that no man openly notourlie rebell against the king's person or authoritie or make warr against the king's liedges: And that wher any declared traitors, or rebells repairs in any part of the realme, none of our liedges shall presume to recept, supplie, or intercomon with them, or give them meett, drink, house, harbour, or any relieff or comfort, under the same paine, for whilk they are forfaulted or put to the horne, and that immediatlie upon knowledge of their repairing in the bounds, all his majestie's obedient subjects do their exact diligence at the outmost of their power, in searching, seeking, taking and apprehending of the said declared traitors, and presenting them to justice; or in following of them whill

* The following entries in Fountainhall concern this case:

"November 22, 1682. At Privy Council, William Lowrie elder of Blackwood, late chamberlain to the marquis of Douglas, and repute a bad instrument between him and his lady in their differences, is imprisoned for harbouring and resetting fugitive ministers, and conversing with rebels who had been at Bothwel-bridge, and other intercommuned persons, and for receiving mail and duty from them. He was referred to the criminal Court, to be pursued there by his majesty's advocate, for these treasonable deeds."

"January 31, 1683. At Criminal Court, William Laury of Blackwood, mentioned 23d November 1682, is brought upon the pannel; the ditty found relevant; and his defences repelled. This ditty ran on his conversing with and resetting rebels that had been at Bothwel-bridge, and was founded on act 15* Parliament 1449; act 97, 1540, and act 144, 1592. The defences proponed by sir George Lockhart, &c. for him were; that the libel was irrelevant and inept, being 'generalis vagus et incertus,' not condescending on the particular times and places of the converse, and with whom; and cited l. 3. D. de accusat.

"2do, The foresaid acts of parl. meant only wittingly and wilfully conversing with and concealing them whom they know to be rebels and traitors, and who were intercommuned, (that being the only badge by which men were prohibited and put *in mala fide* to converse with them,) and that the popes by their bulls and excommunications had put whole kingdoms under interdicts; but there were never such general prohibitions as thir allowed by any lawyer, or any ever pursued in Scotland on this head; which would reach all the western shires and many elsewhere. 3dly, By the 29th chapter statute David 2. The resetters of malefactors cannot be pursued till first the principals be convicted. For put the case, Blackwood should be now found guilty of resetting such a rebel, and afterward that person should be tried and found innocent; *quid juris* then? the sentence against Blackwood would certainly be unjust. Notwithstanding of all which the criminal lords did find the ditty relevant to infer treason; though the 97th act 1540 cited inflicts only confiscation of moveables and death, (but the two other acts are more general,) and repelled his defences: and found it relevant to his majesty's advocate to prove he had conversed with rebels either intercommuned or denounced, or notour, or habite and repute só.—Though it was offered to be proven that these called rebels had conversed openly and avowedly in all places for two years before, without molestation from the king's forces, and were repute free lieges and purged. In this cause the king's advocate brought in several witnesses prisoners by a squade of the king's guard, which had not usually been practised before. Though this interlocutor is of most dangerous consequence, yet it could not have happened to any that was less regretted or

they be taken and expelled, and put off the shyre, and *immediatlie* to make intimation to the magistrates and persons of power and authoritie, in the next shyre, who shall be holden to doe the lyke diligence without delay, and sua from shyre to shyre whill they be apprehended and brought to justice or expelled and putt furth of the realme, and farder whenever

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worse beloved than Blackwood: however the statesmen have over-ruled the judges to this decision; and it is on a very political design as I suppose; thinking this will prove one of the most effectual ways to banish all these rebels out of Scotland: for men being thus frighted to converse with them, they will find neither harboury nor reset, which will quell and dash all future risings in arms, so that it may be of great advantage for the future peace and tranquillity of our country.

"Blackwood appeared in the Criminal Court again on the 5th of February, when they insisted on the grounds of his exculpation, viz. that he was not heritor but only tutor to his grandchild, and did not reside ordinarily in the west but at Edinburgh, where it could not be pretended that thir persons for whom he was accused were nottourly known to be rebels; that one of them had a pass from the king's advocate whom he had dismissed for lack of probation, and that he had pursued removing against another of these rebels before the sheriff, and had ejected him out of his ground: which is all that the 4th act 1681 requires. Yet these were all repelled: and the justices found he should have presented him to justice as a rebel; and that the ejecting him out of his land was not sufficient.

"Then he was upon the 6th day of February again brought to the pannel, and he came in will, and submitted to the king. Whereupon some of the justices were sent to the chancellor and some of the privy council to see if they needed lead probation against him, seeing he had confessed; but they were appointed to do it, to give evidence that what they had alledged was not calumnious; whereupon the witnesses were led (the former depositions that had been taken being first burnt, lest it should be esteemed a preingagement,) and several acts of reset and converse were proven against him; and the assize being inclosed returned him guilty. I heard some charge his lawyers with an omission in forgetting to propone on the 26th act parl. 12 James 6, where only denunciation at the market-cross where parties dwell, puts the lieges in *mala fide* to reset, but not a denunciation at Edinburgh which was the case of Blackwood's rebels; for this was a most important and material point.

"His sentence was pronounced on the 7th February 1683; that he should be taken to the cross of Edinburgh upon the 28th of February next, and his head to be severed from his shoulders, and all his lands and moveables to be forfeit to the king; and his arms were reversed and torn at the cross with sound of trumpet. They gave him thir 20 days time to apply to his majesty for a pardon, if he could obtain it: but without recommendations from our Court here, he could not expect to come speed at London. This seeming rigorous procedure with Blackwood, who had been very wary, cautious and circumspect in his walking (though of disaffected principles) frightened and alarmed many; for they considered, that there were few in the six western shires but were more guilty of that sort of converse with those who had been at Bothwel-bridge, than he; and now it was apparent that the chancellor and present governors were resolved to put these laws vigorously in execution. And they did not stand to blame the late ministers of state, who did not poize the execution of the laws and government with an equal hand, but sometimes relaxed and flattered the phanatics as if they had been afraid of them; clapping their heads; and at other times with the highland host, and the bond and lawburrows, would not only persecute but even extirpate them; and it had been telling the country that my lord Stair, Craigie, &c. had not opposed the taking that bond against conventicles in 1678; for it might have proven an effectual medium of keeping the commonalty in awe, their masters once being bound for their good behaviour, not daring to give them the least connivance. However if Blackwood's interlocutor be designed to be made a leading practick against all concerned, the king may get forfeited lands enough, and the indemnity in 1679 will happen to do more hurt than good for quieting the country: for that pardon coming so suddenly after Bothwel-bridge rebellion, it took away the terror and apprehension of it, so that scarce any stood in awe to take home these persons for tenants or servants who had been at Bothwel-bridge, without examining whether they had taken the bond, which was the condition of that indemnity; and so this promiscuous converse is now like to prove a great snare, and there are 20,000 in Scotland engaged in this guilt without any disloyal purpose, but merely through inadvertency, and pity and compassion to these poor people. So that there is an absolute necessity for a new indemnity—which came in April, clogged with the test and sundry other restrictions.

"Blackwood on the 8th February gave in a petition to the privy council for a recommendation to his majesty for a remission; but it was not judged humble and submissive enough, and so it got no answer.

"The marquis of Douglas on the 12th February gave in a bill to the privy council, craving a prorogation of Blackwood's time of execution, because he had been his chamberlain for these 10 or 12 years bygone, and had not given him his accompts, and it would require some time. The Lords waved this bill, but ordained my lords Dundonald and Abbotshall to take a view of the accompts. Then on a new bill given in by him on the 22nd Febru-

any manner of traitors, rebells, or unknown men, vagabonds, happens to repaire in the countrey, all the liedges knowing them, or amongst whom they resort, shall with all possible speed certifie his majesty, or some of his secret councill or some of the cheiff persons of authoritie and credit, dwelling within the same shyre, that sick persons (if they be knowen)

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ary, they prorogued and continued his day to the first Friday of April, and on a new application till November 1683.

"This case of resetting rebels is much agitate by the doctors, and they make resetting *frequentativum* and so not a single act, and an abstracting and concealing them from justice; which is a step and degree farther than naked converse. See Menoch. de Arbitrar. judic. quaest. cas. 347, 348. The crime of resetting traitors has been little noticed in Scotland as treason. I find the unprinted acts of parliament in 1455, 'That none reset the earl of 'Douglas;' and by the last printed act in 1540, king James the fifth gives a general pardon to all but them who corresponded with the earl of Angus and his brethren, only since they were forfeited and not before: now it was easy to shun the falling into that crime, being few and eminent persons, not an obscure rabble as those many thousand rebels at Bothwel-bridge were; and since 1540 till now, the rigorous pursuing of this crime of reset has sleeped ever till this process, vide Carpzov. Usus Arbor. Consanguin. But reason of state may prevail over all this, where under pretence of acts of common humanity, they support and keep life in the rebellion, so it cannot be extinguished without punishing all: and the crooked tree must be bended contrary to the other side, to bring it to a rectitude, and 'ubi crimina frequentir grassantur tunc exa-'cerbantur poenae.' But 'distingue tempora,' and this crime of reset is either more or less, according as the effects and consequences of it are more or less influential or pernicious to the state."

In 1 Fountainhall, 245, it appears that in Nov. 1683, Lowrie's execution was respited till the following April.

This Lowrie, or Lowry, or Laury, or Lawrie, is sometimes called Weir or Wier (he or his father had married the heiress of Wier, 4 Laing, 131, 2nd ed.) and in the Index to Fountainhall he is called Mr. Robert Blackwood; from that estate. These different names have caused difficulty. See Fox's first letter to Laing, published by lord Holland, in his Address to the Reader, prefixed to Fox's Historical Work.

Burnet's Account of this Case is as follows:

"One Weir of Blakewood, that managed the marquis of Douglass's concerns, was accused of treason for having kept company with one that had been in the business of Bothwell-bridge. Blakewood pleaded for himself, that the person, on whose account he was now prosecuted as an abettor of traitors, had never been marked out by the government by process or proclamation. It did not so much as appear that he had ever suspected him upon that account. He had lived in his own house quietly for some years after that rebellion before he employed him: and if the government seemed to forget his crime, it was no wonder if others entered into common dealings with him. All the lawyers were of opinion, that nothing could be made of this prosecution: so that Blakewood made use of no secret application, thinking he was in no danger. But the Court came to a strange sentence in this matter, by these steps: they judged, that all men who suspected any to have been in the rebellion were bound to discover such their suspicion, and to give no harbour to such persons: that the bare suspicion made it treason to harbour the person suspected, whether he was guilty or not: that if any person was under such a suspicion, it was to be presumed that all the neighbourhood knew it: so that there was no need of proving that against any particular person, since the presumption of law did prove it: and it being proved that the person with whom Blakewood had conversed lay under that suspicion, Blakewood was upon that condemned as guilty of high treason. This was such a constructive treason, that went upon so many unreasonable suppositions, that it shewed the shamelessness of a sort of men who had been for forty years declaiming against a parliamentary attainder for a constructive treason, in the case of the earl of Strafford, and did now in a common court of justice condemn a man upon a train of so many inferences that it was not possible to make it look even like a constructive treason. The day of his execution was set: and though the marquis of Douglas writ earnestly to the duke for his pardon, that was denied. He only obtained two months' reprieve for making up his accounts. The reprieve was renewed once or twice: so Blakewood was not executed. This put all the gentry in a great fright: many knew they were as obnoxious as Blakewood was: and none could have the comfort to know that he was safe. This revived among them a design, that Lockhart had set on foot ten years before, of carrying over a plantation to Carolina. All the Presbyterian party saw they were now disinherited of a main part of their birth-right, of choosing their representatives in parliament: and upon that they said, they would now seek a country where they might live undisturbed, as freemen, and as Christians. The duke encouraged the motion; he was glad to have many untoward people sent far away, who he reckoned would be ready upon the first favourable conjuncture to break out into a new rebellion. Some gentlemen were sent up to treat with the patentees of Carolina: they did not like the government of those Palatinates, as they were called: yet the prospect of so great a colony obtained to them all the conditions they proposed. I was made acquainted

are within the same, and if they be unknown showing their tockens, and for what cause they pretend themselves to be wandering athort the country, or lurking in any part, under the paine, that the traitors, rebells, or vagabonds ought to have sustained, in bodies or goods themselves, in case they had been apprehended, presented, and convict be justice. And be the fourteenth act of the sixt parliament of king James the second, it is declared that all who shall recept such are fughsied for crymes if the cryme be notour or the tresspassor convict, are guilty, are ordained to be punished as the principall trespassor, and be they nyntie seventh act of the seventh parliament of king James the fyft, all sherreffs, bailzees, and others are ordained to doe diligence to apprehend all rebells who are at the horn for capitall crymes, and that no man willfully or wittinglie recept, supplie, maintaine, defend, or doe favour to any of his majesties' rebells, and being at his majesties' horn within their houses, lands, or bailziaries, under the pain of death, and confiscation of their moveables. Nevertheless it is of verity that John Balfour of Kinloch, the deceist David Hackstoun of Rathillet and others having upon the third day of May M. D. C. and seventie nyne killed and murdered his grace, James late archbishop of St. Andrews; they to escape justice, and involve others in their guilt, fled into the western shyres and there rose in a desperat and avowed rebellion, with many others their accomplices and associates, and the said Wm. Lawrie, being a person who hath larglie shared in his majestie's bountie and favour, by the acts of indemnitie emitted by him, albeit, he was brought under the compass of his majesties' laws, by negotiating and corresponding with the rebells who did rise in rebellion in the year 1666, and was defate at Pentland; and the said Wm. Lawrie persisting and continuing in disaffection to his majestie's government, has ever since by his aiding, abaiting, and countenancing rebells, given them too much encouragement to persist and continue in their disorderlie and rebellious course, which is manifest and apparent in sua farr as the greatest part of the lands of Blackwood, being actuallie in the late rebellion, June 1679, were after the rebells were defate at Bothwell-bridge, receaved back by the said Wm. Lawrie as tenants of the said lands, and were allowed by him to labour and manure the ground, and he receaved maill and deutie from them, and particularly upon the first, second, third, and remanent days of July, August, September, October, November, December 1688, two or one, ane or other of the days of ane or other of the months of the years above specified. The said Wm Lawrie of Blackwood recept, aided, assisted, countenanced, harboured, maintained, keeped company with, gave meet, drink to, keeped, maintained upon the lands of Blackwood as tenants, receaved maill and dewtie from them, or keeped them in his actuall service, payed them wages and fed, the persons under-written, viz. John Rae in Blackwood, John Rae his sone, John Cochran in Rochends, Thomas Allan in Mangnehill, and Robert Flemming tenant in Blackemigg, open and manifest declared rebells and traitors, at least fugitives, and at the horn for the crymes of treason and rebellion, at least notorious rebells, holden and repute in the country to have been in the rebellion in the said year, 1679. And the said Wm. Lawrie supplied and corresponded with the said rebells or ane or other of them recept and entertained them as said is, as if they had been his majestie's free liedges and subjects; wherethrow the said William Lawrie has contraveened his majestie's laws and acts of parliament and incurred the paine of treason thereanent at least, as actor, art and part of the foresaid crymes, which being found be ane assize, he ought to be punished with forfeiture of life, lands and goods, to the terror of others, to committ the like hereafter.

Follows ane additional Indytment against the said William Lawrie.

INDYTED and accused that wher notwithstanding be the lawes and acts of parliament of the crymes of treason and rebellion are punishable, with tinsell of life, lands and goods, and the aiding, assisting, recepting, maintaining, corresponding with, ratihabiting, keeping company with, and countenanceing of the foresaid crimes or the persons actors thereof or accessorie

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with all the steps they made; for those who were sent up were particularly recommended to me. In the negotiation this year there was no mixing with the male-contents in England: only they who were sent up went among them, and informed them of the oppressions they lay under; in particular of the terror with which this sentence against Blakewood had struck them all. The Court resolved to prosecute that farther: for a proclamation was issued out in the beginning of the year 1683, by which the king ordered circuit courts to be sent round the western and southern counties, to enquire after all who had been guilty of harbouring or conversing with those had been in rebellion, even though there had been neither process nor proclamation issued out against them. He also ordered, that all who were found guilty of such converse with them should be prosecuted as traitors. This inquisition was to last three years: and at the end of that time all was to conclude in a full indemnity to such as should not be then under prosecution. But the indemnity was to take place immediately to all such as should take the test. This was perhaps such a proclamation as the world had not seen since the days of the duke of Alva. Upon it great numbers ran in to take the test, declaring at the same time, that they took it against their consciences: but they would do any thing to be safe. Such as resolved not to take it were trying how to settle or sell their estates; and resolved to leave the country, which was now in a very oppressed and desperate state."

thereto is punishable as said is, nevertheless ther being a horrible rebellion begunne and perpetrat in the westerne shyres of this kingdome, in the year 1679, the said William Lawrie did so far own and countenance the said rebellion, and the persons accessorie thereto, that upon the first, second, and remanent days of the months of May, June, and July 1679, or one or other of the days of the said months, the said William Lowrie did commissionate, authorize, impower, or give order to, or connive at, James Cleilland, sone to Thomas Cleilland in and James Wilsone, sone to John Wilsone in the toune heid of Douglas, notorious and known rebells, to come to the house of Douglas, and there to robb and take away two cannon, which were thereat, and severall horses belonging to the marquis of Douglas, and a horse belonging to the said William Lawrie, which they actuallie did, and carryed alongst to, and were employed and made use of by the rebells then in armes; and the forenamed persons being at that tyme challenged or demannded, by what warrand or authoritie they robbed and carryed away the said cannons and horses, they answered and said the same was done by command and warrand of the said William Lawrie; and after the said rebells were defate at Bothwellbridge, the said William Lawrie did harbour, recept, entertain, intercommon, and keep company with, the forenamed persons, common and notorious rebells; and receaved back from them the horses so robbed and imployed by them in the said rebellion; and upon a process being persewed by his majestie's advocat before the lords of privie councill, against the said William Lawrie, for recepting of rebells, and probation made thereuntill; the lords after advysing thereof, having remitted his tryall to the lords justice generall and commissioner of justiciarie, he in further perseverance of his disloyaltie and dissatisfaction to his majestie's government, and contempt to his laws, hes dared and presumed, since or before the giving or receaving of his indytment, corresponded and keeped company with the said James Wilsone, a common and notorious rebell, and gave orders and commission to him, to manage his affairs, and to sell and dispose upon his goods and gear, and the plenishing of the rooms belonging to himself or whereof he hes takes or is in possession, pertaining to the marques of Douglas. And the foresaid persons rebells, foresaid, having after the defate at Bothwellbridge repaired back to the towne of Douglas; the said William Lawrie being bailzie, chamberlane, or trustie to the marquis, did so far owne, countenance, recept or intercomon with the said rebells, that they being challenged be some loyall persons in the town, for their accession to the said rebellion, or the lyke, the said William Lawrie contrare to his trust, and the duety of all good subjects, was so far from apprehending or punishing of them that he threatened to, or did punish the persons who challenged them, for saids crymes, and suffered the rebells to escape and goe free: off the which crymes the said William Lawrie is actor, at least art and part, which being found be ane assyse, he ou to be punished by tinsell of his lyffe, lands, goods, conforme to the saids laws and acts of parliament, to the terrour and example of others to committ the lyke hereafter.

Follows aneother additionall Indytment.

YE ARE INDYTED and accused, that where notwithstanding be the lawes and acts of parliament of this kingdome, and constant practique thereof, the crimes of treasone and rebellion, and the aiding, assisting, recepting, maintaining, corresponding with, ratihabiting, keeping company with, and countenancing of the persons guilty thereof, or accessory thereto, is punishable with forfalture of lyffe, lands, and goods; nevertheless it is of verity that there being a horrid rebellion raised and begune in the western shyres of this kingdome, in the year 1679, and James Wilsone in Townheid of Douglas, Alexander Gilbersoun in Syd of Drumaban, Adam Thomsone in Mariegill, Mathew Flemming in James Lawrie late clerk of Douglas, being actuallie ingaged and notorlie knowen to have been in the said rebellion, and being delated by their neighbours and the country people, and indyted therefore at the late justice aire, and not daring to appear (by reason of their notorious guilt) they were declared fugitives, denunced rebells and registrate to the horne, and the said James Lawrie forfault for the said cryme, and yet notwithstanding of the nottoritie and common report of the persons foresaid, their being in the rebellion, the said William Lawrie even since (as well as before) they were declared fugitives, denounced rebells registrate, and forefault as said is, hes most treasonablie aided, abaited, assisted, recept, maintained, ratihabit, correspondit and keeped company with, and countenanced them severall tymes, and in speciall the said William Lawrie did upon the first, second, third, and remanant days of the months of January, February, March, and remanant moneths of the years 1679, 1680, 1681, & 1682, harbour, recept, and maintain the said James Wilsone, a nottorious rebell within his own hous of Blackwood, as also upon the day of September last or ane or other of the days of the said moneth, the said William Lawrie gave commission to the said James Wilsone to sell his nolt in Skirline fair, which commission he accordinglie accepted and obeyed, as also since the said William Lowrie's imprisonment, within the Tolbuith at Edinburgh, he hes several tymes conversed and corresponded with the said James Wilsone, and did there commissionat, and impower him to sell his nolt, and sheep, and sicklyke upon ane or other of the dayes of the monethis, and years above specified. The said William Lawrie did most treasonablie converse keep company and intercommon with the said Alexander Gilkerson a nottorious rebell, did aid, assist, and countenance him in sua far as he procured

him a tack from the marquis of Douglas, of his lands of Syd and gott him a considerable ease of the dewties formerlie in use to be payed therefore, and subscrybed a witness to the tack itself, and the said Alexander Gilkersone's substitution thereto; and also did harbour, maintaine, recept, and defend Adam Thomson, in Mangill, a notorious rebell imployed by him to buy, and sell goods for him, and sold him his wool, butter, and cheese, and receaved money therefore and so well did he know that the said Adam Thomson was in the rebellion; That Claverhouse and captain Inglis troups being in that country in the search and pursute of rebells, The said William Lowrie did most treasonablie order him to stay in the castle of Douglas, where he ordered his dyet to be given him and secured him (as he promised) till the troublesoume tymes (as he called them) were over and the parties of his majestie's forces had left the countrey; and lykewayes the said William Lowrie did harbour, assist, abait, intercomon, and correspond with the said Matthew Fleyming, who went alongst with the rebells as cannonier to the cannons they had taken from Douglas, and being trustie to the marques of Douglas, he made him the marques Foullar, and caused herbour, and enteitain him in the house, and give him ane allowance in meall, and allowed the same Samuel Douglas and James Ogilvie's accompts; though he was a notour rebell guilty not only of the late but of the rebellion 1666. As also the said William Lowrie did correspond, intercomon with the said James Lowrie both before and since he was a forfault traitor, and caused him sitt as clerk in the marques courts, imployed him to write, takes rentalls and other writes and securities, procured him a warrand to carry armes, and did and procured him and the persons above-named, many acts of friendship and favour, most baselie and perfidiouslie abusing and imposing upon the marques, a person of untainted honour and loyaltie, who knew not the persons above named, nor that they were rebells, he being the marquess trustie all the tyme. Off the whilk crymes above written, the said William Lowrie is actor, art and part, which being found be ane assyse he ought to be punished with forfaulture of lyffe, land, and goods, to the terror of others to committ the lyke hereafter.

Persewer.—Sir George M'Kenzie, of Rosehaugh, his majestie's advocate.

Procurators in Defence. — Sir George Lockhart, sir Patrick Hume, sir John Gordoune, Mr. William Fletcher, Mr. Richard Douglas, Mr. Walter Pringle, Mr. Coline M'Kenzie.

The Lords authorise the advocates for the pannel to compear and plead in his defence.

The Debate.

Sir Patrick Hume for the pannel, alleadges denying the libel and haill members and qualifications thereof; that he ought not to passt o the knowledge of ane assyse, 1mo. because as to that part of the lybell that the defender did negotiat and correspond with the rebells, the year 1666, that was defat at Pentland.

It is answered, That it is very well known that the defender hes always behaved himself as a peaceable and loyal subject, and is no wayes inclyned to faction or seditions, to countenance or encourage rebells or seditious persons, but upon all occasions readie to concurre for suppressing rebells, and he did noways negotiat or correspond with the rebells at Pentlandhills, farder, then he was appointed by authoritie, it being by express warrand and command of his excellence generall Dalziell, who then command his majestie's forces, that the defender should goe intimat and make known to the said rebells, the proclamation of his majestie's privy councell, for dissolving and laying down their armes and submitting to his majestie's authoritie, which was so far from being ane act of disloyaltie, that it was a great testimonie of his zeall and affection, to his majestie's service, and his excellence did sufficienthe vindicat the defender of this, before his majestie's privy councell.

2do. Whereas it is lybellit that the defender did aid, abait, and countenance the rebells, in so farr as the greatest part of the tenents of Blackwood, being in the rebellion 1679, after the rebells were defate at Bothwellbridge, were recept back be the said defender as tenents upon his lands and were allowed be him to labour and manure the same, and that he receved maill and dewtie from them. The lybell in so generall termes is not relevant, unless the particular persons were condescended upon, and as to the particular persons mentioned in the lybell it is not relevant against the defender, unless these persons who it is alleadged he did aid, abait, or assist, were first found guilty of being in the rebellion, for aiding, abaiting, and conversing with being only acts of accession to the cryme, the defender as guilty of these crymes cannot be insisted against before the principall parties be discust.

3. *Et separatim.* The lybell is not relevant unless the persons mentioned in the lybell with whom the defender is alleadged to have conversed with, aided and recept, had been intercommoned be letters of intercommoning, or that the defender had aided, assisted or keeped correspondence with them when they were actuallie in armes *in actione et rebelliones*, seing letters of intercommoning are granted and published for that effect that it may be known who are rebells, the liedges being thereafter put in *mala fide* to aid, converse with, or assist them, and these are the specifick acts fixed upon by law that can only put the lieges in *mala fide*.

4. The persons mentioned in the lybell, with whom it is alleadged the defender did converse with, and being tenents as is acknowledged by the lybell, they were secured by the Act of Indemnity, upon taking the bond, never to carry armes against his majestie; and, however, if

they had neglected to take the bond, and so not have the benefit of that act themselves, yet seing they were persons capable of the indemnitie, the lieges were in *bona fide* to converse with and recept them upon the lands, seing they might rationallie presume, that if the said persons had been in the rebellion that they would have taken the benefite of the Act of Indemnitie.

His *Majestie's Advocat* replyes, That he insists upon Blackwood's former carriages, only be way of aggravation, the same being too notour, either to be proven or ommitted; and as to the generalitie of the lybell founded on in the first defence, he makes no further use of it than for the same effect. As to 2nd, wherein it is contended that recepting, &c. are only accessions, and so are not relevant till the principall traytor be first convict. It is replyed, that recepting is *per se* a species of treason, and so declared by the acts of parliament and common law, and they are discust as far as the law can allow. In sua far as they are denunced fugitives, and though they were not, yet the nottorietie of the rebellion shall be proved.

To the 3rd, bearing, the persons should have been intercomoned who are alleadged to have been recept or els should have been such as were actuallie in armes. It is answered, that by our law the recepting of nottor and open rebells, or of such as are denunced fugitives, is sufficient without intercomoning in the case of treason, neither which acts does require intercomoning, and intercomoning is only used by the lords of privy councill in less attrocious crymes than treason, such as murders, reiffes, or 'ob majorem securitatem exmi'dulgentia legis,' for giving farder notice to persons who live at a great distance, and as to this point the lords interloqutor already pronounced is bearing, recepting, harbouring, giving meat, drink, &c to persons notorlie and openlie rebellious or who were denunced and put to the horne. This is in itself very just, since there can be nothing better notified to the people, then when either the cryme is ane open rebellion and committed in the same country and shyre, or where the persons are published, denunced fugitives conforme to the act of parliament and the letters of denunciation registrat, which might been easilie known by any who had done the least diligence, nor would letters of intercommoning have done more, and intercommoning being only where it is dubious to the people, whether they might converse with persons guilty of such and such crymes. There was no dubitie as to traytors. The acts of parliament of the nation having discharged intercomoning with these *de jure*, and the cryme itself being lykwayes so notorious.

To the 4th. I thought his majestie was graciously pleased according to his often abused clemencie to grant any indemnitie to tenents, yet that was only upon condition they should take the bond, and therefore except the condition had bein purified by taking the bond, the persons remained still rebells, and the same law and reason, that oblieged them to know that they were rebells, did lykeways discharge them from recepting, &c. except they had actualie layd hold on the condition of his majestie's clemency. And the pannell and all others should have abstained till he had seen the saids persons cleared, which was a thing very easie for him to have done, but much more should he have done this, when he and others lived in the same shire with them, and keept them upon his land, nor could there be any securitie for the government if such lawlessness were allowed, especially seeing the laws for preservation of the commonwealth and public securitie as well as because of the odiousness of the cryme, has commanded all his majestie's liedges to certifie his majestie when any such traitors were in the countrey, which is yet a higher degree of dilligence, and which is reallie necessary for preserving the kingdom against rebellion, and wee have found by experience, that this laxness has been the occasions of rebellions in which we have exceeded all the nations of the world, to that hight that wee have even lost the notion of treasons, nor will wee ever be secure till our laws again be returned to their deu execution.

Sir *George Lockhart* duplys, That the foresaids defences adduced for the pannel stand relevant, and are no ways eleided by the foresaid reply, and in so far as concerns the point of aggravation the pannel thinks it no wayes necessarie to insist thereupon, it being notour and evident that he acted nothing except by express warrand and commission; and as to that part of the defence, that the pannel by all the acts and qualifications lybelled, being only conveined as a recepter, maintainer, and corresponder with rebells, cannot be put to the knowledge of an assize, unless the rebells were first convict. It is in itself most just and relevant, and by his majestie's advocat's own confession must take place, as to such of the persons condescended upon who were neither forfaulted nor so much as declared fugitives, and as to the wholl persons, the defence is relevant and founded upon express laws, and particularlie upon the statute of king David 2nd, caput 19, wher it is expresslie ordained, 'coram rege in pleno parliamento quod super'cedendum est de receptatore alicujus malefac'toris indicandi sive appellandi quousq; recep'tatus indicetur et si receptatus quietus fuerit 'receptatur quietus sit sine alioqua, alioqua 'assizam et autem receptatus damnatus fuerit 'receptator habebit assizam.' Which law is so clear and positive as does exclude all debate in the contrair, and requires that any person persewed as guiltie of recept or complex cannot be put to the knowledge of ane assize, all such qualifications being but a degree of accession, unless the principal partie wer first judiciallie convict, and the reason is most apparent, because, if this order were inverted, it

might fall out that one might be condemned as accessor or accomplice of the alledged cryme of another, who when he came to be tryed, might be acquit, of the same cryme, which if it did ensue behooved to convince that the first who was condemned was absolutely innocent. And the samen is also expresslie determined Quon attachi: Caput 83. Likeas as ther are a great many persons condescended upon, with whom it is lybelled the pannel did correspond, harbour, mantaine and recept, wer neither forfault nor declared fugitives, as to many others who are declared fugitives and prisoners, and in the power of his majestie's officers to sist and bring actuallie to tryal. It is not at all relevant to pretend that they are either forfault or declared fugitives, unless they were forfault upon a probation of the cryme, and of the treasonable fact itself, which is the medium concludendi in this libell against the pannel.

And as to that point of the lybell, That the pannel is guilty of the recept and harbouring of rebells and corresponding with them, and doeing the other acts, and deeds, and qualifications lybelled. It is duplyed, That that part of the lybell is not founded upon the acts of parliament, narrated in the lybell itself, and being a poynt of universall consequence, that tends to involve whole tracts of countreys in the cryme of rebellion. It is hoped the lords of justiciary will proceede with all possible tenderness to introduce and establish such a preprative, seeing, albeit it is to be regreted, that ther have been frequent instances of rebellion, yet by no precedent upon record it can be mad appear that persons were ever persewed, much less found guilty of the cryme of treason upon the qualifications lybelled, except by the highest degree of diligence and execution, a public mark and seal were put upon such rebells, and the leidges expresslie discharged to intercommon with them, and the laws and acts of parliament of this kingdom must be understood to proceed upon the same principles of policie and justice, which was established by the common law, and by the laws and policies of other nations and be the common law, and that be the 'Ad Leg. Jul. Ma. wher dedita opera,' there is a condecescension of the severall heads and grounds, whereupon the crymes of treason is inferred, which is very large and comprehensive; yet in the 4th law of the same title, the law itself consider the qualification lybelled only in these terms, 'Cui juste opere dolo 'malo hostes populi Romani comeatu armis 'telis equis pecuniæ aliva re adjuti erunt,' which was to enemies in the state of rebellion, as the glosse and all lawyers doe acknowledge, and by the laws and policies of other nations, where such supply and correspondence does not relate to rebells actuallie in rebellion, publict diligence is interpreted which in other countreys is called *Bannum* and with us Letters of Intercomoning,* and after which all his majestie's liedges are then under the hazzard of guilt, and of being involved in their crymes to harbour recept, suply or intercomon with rebells, and it is evident from the acts of parliament, whereupon the lybell is founded, that this is a just import and interpretation of the said acts, and consuetude, which is *optima legis interpres*, has so interpret the same and no other sense can be elicit, from the 141 act par. 12, in Ja. 6. Lykeas it is evident from the said act that the rebells therein mentioned wer still considered as rebells actuall in rebellion and under actuall prosecution, all his majestie's leidges be called to persew them from shyre to shyre, or the act proports and the lords of justiciary will be pleased to take notice, that the acts of parliament lybelled upon, doe not commence only the case of such who had been actuallie in rebellion, but the case of all crymes for which parties were denounced and put to his majestie's horne, and it were ane odd consequence to imagine that it was the sense and import of the said act, That the simple conversing with criminalls, after they were either convict or declared fugitives, should involve his majesty's leidges in the punishment of their crymes, unless letters of intercomoning were directed against them as a public brand and mark to harbour, recept, supply or intercomon with them.

3. As this is the true import and the just interpretation which all former precedents and customes have fixed upon these acts of parliament, so much more it ought to be sustained in the particular case of this pannell. In respect after that execrable rebellion wherein too many were involved, his sacred majesty having thought fitt from his clemencie and goodness, to offer a generall indemnitie to persones of no higher degree than tenents, upon their subscribing the bond, it was sufficient to take off any cryme that could be inforced against his majestie's subjects, who were innocent of these crymes, though any such thing could be proven against the pannall, that efter the said indemnitie, he had recept, supplied, corresponded, intercomoned, or keeped company with any of the said persons, in regard both he, and all others his majesty's lieges, had reason to presume and believe, that any who were guilty of the rebellion would readily lay hold and embrace the tender of his majestie's indemnitie; and though the not taking of the bond may verie justlie forefault the rebells themselves, the benefit of the said indemnitie, yet that cannot be obtruded upon the pannall, the taking or not taking of the bond, being a poynt in *facto alieno*, the lawe presumes another to be justlie ignorant; and who had no reason to distrust the same, finding such persons to repair to their dwelling places, live peaceablie, publiclie, converse with all men, to receave no trouble, nor be under no prosecution from his majestie's officers and souldiers, in those parts, nor from donatores, nor others, having commission to uplift the goods of rebels; all which concurring is in lawe sufficient to evince that the

* As to Letters of Intercomoning, see the Note in vol. 6, p. 1208.

pannal cannot be found guilty, upon the account of his recept of such persons, and doeing the other acts and qualifications lybelled, these being the common acts bearing no relation to the crymes, nor no wayes tending to maintain or secure rebells from the just prosecution of law lyke as the pannall is in a speciall case and different from many other heretors, and persons in the countrey; in respect that albeit the persones condescended upon are lybelled to be tennents of the lands of Blackwood, yet the pannall was not so much as heretor of these lands, but which did belong to the deceist, George Weir his sone, as air of Tailzie, to major Bennendyne, and wherein was in possession several years before and after the rebellion; and all the interest the pannal bad, was, that some two years after his sone's death he became tutor in law to his grandchildren, and appoynted chamberlands for ulifting the rents and paying his sone's debts, and had not so much as his residence upon the lands, but lived at a considerable distance and for the most part in the city of Edinburgh.

And as to what is urged that the Lords of Justiciarie by their interloquitor in another case have found that it is sufficient to make a party guilty upon the qualifications lybelled that the rebells were convict, or denunced, or notoriouslie known held and repute to be rebells. It is answered that it is hoped the lords of justiciarie both may and will consider their interloquitors with all due regard to the import of the same and to all former precedents and customes as to this poynt, and it will appear by the debate that there was no such alleadgeance preponed be law and custome letters of intercomoning and it does not in the least import that such letters use to be direct by authoritie of the lords of privy councell, because if that were acknowledged yet it is just they should be direct as to that effect, to make the liedges involve in the same crymes of treason and rebellion, whereof the rebells are denounced.

And as to that part of being notorious rebells, law and custom hes condescended upon letters of intercomoning to inferr the same, and certainlie *notorium* in the terms of lawe is not applicable to this case, for that is never understood but where is committed, 'palam et in spectante,' that 'non egit probatione' as is clear by Matth. 'de probationibus' cap. 15, and be Julius Clar. Si. Finals, cap. 9.

And the persons mentioned in the former lybells whereupon the lords of justiciarie gave their Interloquitor wes master John Welsh and others who were actuallie intercomoned, as also there was nothing followed upon that interloquitor, but the parties notwithstanding were immediately discust.

His *Majestie's Advocate* triplies, That where recepting is only ane accession, as in the cases cited, viz. Crimen Latrocinij, &c. Ther they being only persewable as receipters, the principall must be first discust. Those lawes speaking only of recepters, but the pannal is persewed for the cryme of treason as ane criminall principall and not as ane accessory cryme, it being expresslie by the 14 act, 6 parl. king James 2, declared, that frae it be notour or the tresspassor convict, he shall be punished in lyke manner as the principall trespassor, and so may be punished without any previous tryall.

And which law being posterior to the former does not at all appoynt that the principall should be first discust, and the extraordinarieness of the cryme did require so, nor would it be absurd at all, that such as secure those who were denounced fugitives for treason, should be execute, though therafter the pannall were acquytt, for the should have abstained from recepting or comforting any persone that was declared fugitive for treason, without making themselves judges whether the persons declared fugitive were guilty or not, and if this were true denunciations for treason would signifie nothing, Lykeas by the 14th act 12 parl. K. Ja. 6 speaks only of those who recepts traitors and rebells contemptuouslie, remaining at the horne, so that though they were never so ignorant yet the recepting of them whilst they contemptuously remained at the horne is declared treason, without speaking of their being guilty.

Whereas it is contended that our acts of parliament most only be interpret of such as recept and assisted actuall rebells, it is answered, that certanly all such as are declared enemies to the country and denunced for treason are in the construction of law actuall rebells *et hostes imperii*, whether they be in actuall armes or lurking; or can any man think, if a general of a defate army, or a man who had killed the king and denunced therfor, would not be such ane actuall enemy in the construction of law, as that the recept of him were treason; and the said 144th act stricks against such as recept those that are wandering through the country, or lurking in any place, and that is lykewayes by the meaning of the said *lex quarta*. It being most just that he should be 'repute hostes populi Romanj' who does commit treason against him, *hostes* being properly ane enemie, and all traitors being such. And in the construction of lawe and common reason all such as are declared traitors, most still be looked upon as such as are ready upon all occasions to take up arms, and want only the power, not the will.

As the Interloquitor is most clear in the terms foresaid, so it is no matter whether any pannal were punished conforme to that Interloquitor, that having proceedit for want of probation. And if ther had been probation they would have been forfault. The judges having declared this to be law.

As to the case of notorietie, it is contended that some things are notour per 'notorietatem Juris;' and others, 'per notorietatem facti notorium Juris est per sententia or Bannum;' and, in our law no person is denunced fugitive, but by the sentence and command of a judge declaring him fugitive, and no nation under heaven hes a more solid and certane way of in-

ducing this 'notorietatem Juris,' viz. Open Proclamation, affixing of copies on the Mercat Crosse, and permanent open Registers, and there may be lykewayes a 'notorietas facti 'per famam,' though the people have not seen the ground of the notorietie. As for instance Robert Hamiltoun generall is notourlie known to have been general, and if any of us had recept him immediately after Bothwell, though before he was denunced fugitive, if they had known him to have been Robert Hamiltoun, they had been certainly guiltie of treasone, as having recept a notour rebell; for else it should be lawe to recept all men before they were denunced fugitive, though their guilt were never so haynous, and so notour and ordinarlie, the recepting them immediately after the cryme is more dangerous than after denunciation; because, then they are only seeking shelter, and need to have their escape made Whereas ordinarly they are secure before they can be gotten declared fugitive. Of all persons, Blackwood is most guiltie, and if this lybell be not found guiltie against him, it cannot be against any, for he did not only converse transiently, but keeped men upon his own ground, entertained, corresponded with very many. and in effect with all that ever came in his way, and that for many years, and even the persons who had taken away cannon publicthe in the towne wher he dwelt, nay, and efter he was in prisone for that same verie cryme, and though he was not heretor he was *loco domini* being tutor and *quo ad* recept it was all one, for it is the keeping on the ground, and not doing acts of property, that makes recept; and if the duke of Munmouth's chamberlane should recept all the tenents who were rebells, this might be as well alleadged for him, nor can Blackwood alleadge that this was a latent treason, but it was of its own nature, an open and notour treason, viz. an actual rebellion, which all men should have been jealous off, and secured against, and he should have seen that his own tennents should have taken the bond, lyke as what ever may be said in single acts for men whose principles are above all suspition; yet in such a long tract and such a complication of guilts, the councell having formerlie bein informed by persones of great honor concerning Blackwood's kyndness for the first rebellion, and common bruit and open fame of his kyndness for all persons of those principles, ther was extraordinary reason to prosecute Blackwood.

Interloquitor.

The Lords having considered the indytements persewed be his Majesty's Advocate, against William Lowrie of Blackwood, with the defences proponed for the pannal, and haill debate, repells the defence and reply, in respect of the answer and duply, and finds the indytements as they are lybelled, viz. That the pannall as heretor of the lands of Blackwood, or as tutor and manager of that estate, recept, maintained, harboured, and intercommoned, or conversed with, or did favours to the persons lybelled, who are declared traitors, or denunced and registrate to the horne for rebellion, or notorious and knowen rebells who have been actuallie in the rebellion, Relevant; and remitts the same to the knowledge of the Inquest.

CURIA JUSTICIARIÆ, S. D. N. Regis tenta in Prætorio Burgi de Edinburgi 5th Feb. 1683 per Nobilem et Potentem Comitem Jacobum Comitem de Perth, Justiciarium Generalem, et Richardum Dominum de Maitland Clericum, et honorabiles viros, Robertum Dominum de Nairne, Dominos Jacobum Foulis de Collingtoun, Davidem Balfour de Forret, et Rogerum Hog de Harcauss, et Alexandrum Seton de Pitmedden, Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitime affirmata.

Intran,

William Lowrie of Blackwood prisoner.

Indyted and accused for the crymes of treason in manner mentioned in his lybell *ut in die præcedente.*

Persewer.—Sir George M'Kenzie, of Rosehaugh, his majesty's advocate.

Procurators, in defence, ut supra.

The lords caused to be read the Interloqutor before pronounced, and remitted the same to the knowledge of the assyse

ASSISA.—John Riddell, of Hayning; John Gordon, of Cairnburrow; George Morison, of Bognie; John Gordon, of Avochie; James Murray, of Skirling; Andrew Hamilton, merchant; Thomas Brown, late Bailzie; John Johnstone, of Polton; Alexander Cruikshank, merchant; John Muir, of Park; Sir William Binning, of Walcyfoord; Thomas Fairholme, merchant; Patrick Still, vintner; Alexander Abercromby, vintner; Thomas Wilson, merchant.

The Assise lawfullie sworn, no objection of the law in the contrarie.

The Interloqutor read in presence of the pannell and assyse, and instruments taken there upon by his majestie's advocate. It was alledged by sir Patrick Hume, that the pannel yet cannot pass to the knowledge of ane assyse, Primo, because the lybells being in general terms, that the defender did assist, recept, &c. the persones lybelled ane or other of the days of the mounths of the year 1679, 1680, 1681, and 1682: it was not relevant unless the particular tyme and place were condescended upon, as is clear from the common law, leg. 3. sect. De excusationibus et inscriptionibus, by which it is expresslie provyded that the tyme and place and other circumstances ought to be condescended upon, 'generaliter præcipitur omnibus que reum aliquam deferunt ne autem 'diem ne horam invitus comprehendit quod li'belli inscriptionum legitime ordinati non fue'runt rei nomen aboletur.' As also it is clear from the laws of our neighbour nation, stat. 37,

Henry 8th, the day year and place must be expressly condescended upon, and Andreas Gaill, lib. 1, Observat. 64. num. 9, where he says expressly that 'in criminali accusatione si non 'contineat locum et tempus delicte ipso jure 'nulla est.' As also it is clear from our law quon. attach. cap. 24, num. 5th and cap. 75, by which it is provyded that the names of the parties, day, year and place, cause of complaint and damage must be condescended upon, by which it is evident that it is as necessar to express the tyme and place in the lybell as the parties name or cryme for which they are persewed; And the reason of the law is most just, for if it were otherwayes that so general a lybell, then the defender should be precluded of many just defences, such as the defence of *alibi* and others.

2. *Et separatim*, that the defender being but tutor to his grandchyld and having his residence *focum et larem* constantly at Edinburgh, he could not be supposed to know who were repute rebells in that country, or who were in the Porteous Roll, for what ever may be pretendit in case denunciation were made at the marcat crose of Edinburgh by letters of intercomoning, that cannot be extended to the Porteous Roll at the Justice Aire of that countrey, and he not being tutor served till July 1681, it is offered to be proven that immediately when he had his title, he did diligence and ejected such persones condescendit upon in the lybell, alleadged to be rebells as were tennents, at least ejected their families, as appears by a precept for ejecting and ane instrument of ejection taken thereupon.

3. And lykewayes *separatim*, it is offered to be proven that the persones lybelled wer so far from being notourlie knowen or repute rebells, as on the contrarie they did openlie and publicflie converse with all their neighbours in the countrey, and went about their affairs, and were never challenged nor troubled by any of his majestie's forces who were quartered in and about that place, nor by the donators nor others who had commission to intromitt with rebells goods, so that they were never looked upon as nottorious rebells; and it is a principle in law that 'receptam banitum toleratum in civitate 'non tenetur ad pœnam.' Marcill. et Pract. Crim, ff. aggredior num. 28, especiallie 'quando talis 'patientia et tolerantia fuerit publice et palam,' and several of the persones did keep public changes, wher all persons wer in use to resort and keep company with the souldiers and others of his majestie's forces when the past and repast that way, so that the said persons not being looked upon as notorious rebells, all the country people and others about the conversing with them can never infer any cryme against the defender, much less the crime of treason, and if this were sustained then all the persons in the country about that conversed with them, and particularlie those of his majestie's forces, should by the same reason be guilty of treason. And 'quælibet causa etiam 'injusta quelibet credulitas etiam fatua excusat 'a dolo presumpto et pœna,' 25, 6, ff. De hereditatis, 'petitione et non puto hunc esse prædonem qui dolo caret quamvis injureret,' and if need beis it is positivelie offered to be proven that the persons mentioned in the libel were not repute notorious rebells in the country where they lived, at least at Edinburgh where the defender had his residence, which is sufficient to purge any cryme in the defender by his recepting, aiding or conversing with the said persons, which is clear from the lawyers upon the common law and lawyers upon that subject, as appears, by Andreas Gaill, num. 1, et 24. As also from our law, quon. attach. cap. 24, num. 5, et cap. 75, num. 4. 'si autem rex appellet de 'aliqua injuria appellatus purgavit se versus 'regem per sacramentum duodecem legalium 'hominum;' which is sufficient to take off presumption of his knowlege, that he did converse with known not our rebells, and the Lords of Justiciary's Interlocutor is humblie craved upon all these poynts separatim.

His *Majestie's Advocate* oppons the several indytments, being all a tract of recepting, corresponding and converse, and which is as speciall as the nature of the thing will allow; for as to his own tennents, it is lybelled that they remained upon the land, and as to those that he corresponded with, it is lybelled that at severall tymes he employed them to sell his goods, &c. and as to the conversing with those who took away the cannon and cannoneir, the fact was so open and notour, that it being done in the verie town where he had the absolute power himself and ordinarilie resided, and the fact being so remarkable, it was impossible that any bodie could not know it. But as to all these, the former interloquitor sustaining the lybell is opponed, and though something may be said why a particular day and hour should be condescended on, where the doing of what the pannall is accused for is lawfull at some tymes or hours, yet wher it is all tymes unlawfull as to this case, the lybell neyther neids nor can be more speciall.

As to Blackwood's diligence in putting them off his ground, it is answered, that whether he put them off his ground for accession to the rebellion or not; if he did put them off for accession to the rebellion, instruments is taken upon his alleadgence, and the Act of Parliament is expresslie opponed, 144 Act, 12 Par. Ja. 6, whereby all persones are ordained to apprehend rebells and bring them to justice. Lyke as in this particular case, all heritors and others his majestie's good subjects were commanded to do so by open proclamation, and if they were put off the ground for that cause, it cannot found a defence; and it would be a verie strange thing, if a man should know a rebell upon his ground and should not acquaint the government of it, the acts of parliament and interest of the nation being so clear as to this poynt, and it were ane easie thing to make up private diligence in that case where men may procure private instruments and make up ejections in their own court, but the interloquitor

of the crimitell is opponed, bearing he should have done diligence to apprehend or advertise the government that they might be apprehend, and his majestie's advocate takes instruments upon their founding upon this interloqutor, and craves it may be admitted and repeated 'in toto et non in parte.'

As to their being habite and repute persons, innocent and others having conversed with them. It is answered, that the interlocutor having alreadie found that it is treason to converse with persons denunced fugitive for treason, or open and notorious rebells, the opinion of some of their neighbours, especially in a shyre so guiltie, which was of itself the heat and fomenter of the warr, their opinion is not to be considered, for it shewes their guilt, but not Blackwood's innocence; and after persons are actuallie denunced fugitives, nothing can be relevant but actuall apprehending of them conform to the act of parliament, that being by the act of parliament declared to be the dutie of everie subject. The connivance of the king's officers or servants, or their not doeing diligence cannot excuse a master keeping his own tenants on his own ground, for they being out transiently in the countrey, and strangers are not obliged to know; and there is a great difference betwixt them and masters and people constantlie living upon the place, especially when ther were evil principled men enough in the country to tell the sojors they were honest men, and to hyde them from the sojors as is here lybelled against Blackwood. As to the case of compurgation, it is now obsolet with us, and they behooved to be the compurgation of honest men who had done diligence. But all that can be said therefor compurgation or habit, and repute, is only *in dubio*, but not where ther is either denunciation which is *probatio probata*, and against which no probation can be led, or where a probation of the notorietie founded upon such extraordinary circumstances as are lybelled, is positivelie offered to be proven.

Sir *George Lockhart* duplys, That the pannel's procurators adheres to these poynts of the defence relating to the informalitie of the lybell as being in general terms, and to the tex of law and authorities cited for that effect, and as to the distinction made betwixt crymes that are unlawed at all times, and to which ther is no necessitie of any special condescendion to be made. It is without all ground, and contrair to the express words of the law, cited where cryme stated is the cryme of adultrie; and where the form of the lybell is set down, that it behooved to be committed 'domo illius 'mense illo,' and the rest of the special circumstances lybellit upon that importent rule in law, that 'non licet vagare in criminalibus,' and that the pannel may not be prejudged of their just and relevant defences.

As to that poynt, that the pannel's doeing diligence for removing the persons condescended upon as rebells off his lands. It is most just, and not at all elided by the reply, and it is not indeed inteligable to what right this shall runne, if the qualifications of rerept lybellit shall be so far sustained, as that neither heritor nor much less tutor, shall be exonered upon doeing of diligence to remove persones who are suspect of accession to the rebellion, or bruited to be such of their lands, privat heritors not being in a capacitie to sease and make men prisoners, which is the duty of publict judges and magistrates upon the place, and of his majestie's officers and souldiers in the first place. Lyke as the interloqutor of the lords of privy councill is expresslie opponed, and as to that pretence that it was the duty of the pannal to have made intimation and discoverie of such persones to the government. It is answered, *primo*, That if the qualifications of the lybell be true, that either the persones were declared fugitives or notoriouslie knowen to be rebells, those qualifications, both were and ought to have been knowen to the judges and publict magistrates, as much as to private persones, so as there was no necessity of intimation or discoverie.

2. The pannall's intenting of a persute before the judge ordinar for removing the saids persones was a sufficient intimation, and the pannall's neids not farder insist upon this poynt, but oppons his diligence founded upon a warrand and decreet of removing, and ane ejection against all whom he suspected to be guilty of any accession, and which is found relevant by the lords of privy councill.

3. As to that poynt of the lybell, at the least that they were commonly holden and repute to be notorious rebells, the forsaid defence is repeated and opponed, by which it is offered to be proven, that the persons condescended upon in the lybell were so far from being notorious rebells, that they did for severall years converse publiclie and openlie at kirk and market with his majestie's officers and soldiers, and others, and were never questioned or troubled, and in the opinion of all lawyers that ever were extant, or did write upon 'Crimine Notorie,' it most be such, and the nottoriety of it so apparent, as 'null tergeversatione cœlari 'potest,' as being committed 'coram pupulo,' and which from the notorietie of the fact itself requires no probation; and as to that excellent criminalist, Jul. Clar. has it, quest. 9. It is not sufficient, that the fact whereupon the cryme was subsumed, was 'Nottor nisi etiam sint 'notorij qualitates ipsus facti, viz. Quod nulla 'defensio vel excusatio,' compel, which is impossible to be applyed to the case of the persons condescended upon in the lybell, in regard of the foresaid defence, which is offered to be proven. And also Matth. in his title De Probationibus, he furder requires that to make out any notorious cryme, it should be *de recenti*, and committed in the place wher another lives, and had his residence upon the lands of Blackwood, where some of the persons lybellit are condescended upon to be tenants: but had his dwelling and residence at Edin-

burgh, and to whom it could not be notorious and evident that the persons lybelled were guilty or accessorie of the rebellion, and far less that ther was 'Nulla defensio nulla exculpatio,' competent in regard of his majestie's gracious indemnitie, allowing those who were not heritors the benefit of the bond, which however it cannot defend the persons guilty; yet according to the opinion of the lawyers cited, it takes off the qualitie of the notoriety of the cryme, so as the pannel cannot be overtaken upon that ground, and the persones condescended on and lybelled, considered as notoriouslie guiltie so as to make converse, and the other qualifications lybelled import against the pannall, that he is guilty of the cryme of treasone.

Interloquitor.

The Lords having considered the wholl additionall debates, they in respect of the lybell and reply, repells the defence anent the generality of the lybell; as also the defence founded upon the pannall's doing diligence and nonresidence upon the lands of Blackwood, and repeils the defence anent the notorietie, and adheres to their former interloquitor, and remits the lybells to the knowledge of ane inquest.

Farder Debate.

Sir *Patrick Hume*, for the pannel, alleadges, That he cannot pass to the knowledge of ane assysse in sua far as it is lybellit that the pannall aided, assisted, &c. the persons mentioned in the lybell; first as to John Rae, elder, it is offered to be proven, that he being prisoner in the Tolbuith of the Canongate, he was discust upon taking of the bond. As to John Rae, younger, he is not a tenent, and the defender never conversed with him, and also he being apprehended and brought to Edinburgh, he and Thomas Allan, another of the persones mentioned in the lybell being consious to themselves of their own innocence of being at Bothwell bridge, or having any accession to the rebellion, has given in a petition to his majestie's privy councill, craving that he may be put to tryall, as appeirs by the petition produced, and a farder testimonie of their loyaltie and affection to the king and government, that they never entertained any rebellious principles. They are not only willing to take the bond, but if they should be requyred, they are lykewayes to take the test. And as to the said Thomas Allan, he keeped a publick taverne wher all persones resorted; as also it is offered to be proven, that he was at home the tyme of Bothwell bridge. And as to the first additionall lybell bearing that the defender did commissionat, authorize, impower and give orders to James Cleilland lybellit and James Wilsone who are also alledged to be known rebells, and to have taken away the two cannons and severall horses belonging to the marquis of Douglas, and ane horse belonging to the defender and which are alleadged to be employed in, and made use of in the rebellion, alwayes denying the same in sua far as it is lybellit that the defender did continue with the saids persones, it is not relevant, seeing to connive, 'nomen est nomen juris,' unless the defender had actuallie given command or warrand to them for that effect, and to show how groundless this pretence is, it is offered to be proven that the defender came from his son's house of Blackwood, and upon the 2d of June, 1679, came to the castle of Douglas, and waited upon the marquis to Edinburgh upon the 3d of June, and carried alongst with him all his horses except a young black gelding that was going in the park, which the marquis had bought from the defender at Martinmas before, and so far was he from conniving with the rebells that least they should have gotten his sone's horses who was then lying sick, he did bring them likewayes along with them to Edinburgh, and lent one of them to the earl of Eglinton to goe alongst with his majestie's forces; and the defender did stay himself with the marquis at Edinburgh all the time untill the rebells were defate at Bothwellbridge, neither did the defender ever see or converse with the said James Wilson till October 1681, that he was invited to his father's buriall, wher he did see him with a number of other persons who were at the buriall performing that act of charitie, so that the defender was no more guiltie of conversing with him than all the other persons that were present at the buriall; and albeit it could be made appear that the cannon wer carryed away from the castle of Douglas, yet it cannot be made appear that it was done by the said Cleilland or Wilson, at least they had no order nor warrand from the defender for that effect, and as to James Cleilland the defender could not converse with him, because it is positivelie offered to be proven that he was killed four before Bothwellbridge, and the black that was taken out of the park of Douglas was a horse belonging to the marquis, and not to the defender, and after he was brought back by a partie of the rebells to Lessmahago, he was taken in custodie by some of the marquis's servants, and being shot in the counter he died, but the defender never meddled with the horse since December 1678, that he sold him to the marquis. And as to James Wilson, it is offered to be proven that he was a common drover and did buy and sell since that time in publict fairs and mercats, at the west port of Edinburgh, House of Muir and other fairs and mercats, and at no tyme the defender or his servants bought or sold with him, and he is not in a Porteous Roll nor declared fugitive. As also as a farder evidence that the said James Wilson was not guiltie of, nor had accession to the said rebellion, he being apprehended here at Edinburgh, and examined be his majestie's advocate, he was discust as not being guiltie, and which was done since the defender was imprisoned; and whereas it is alledged that the saids persons who are alledged to have been rebells after the defeat at Bothwellbridge, did repair back to the town of Douglas, the defen-

der, being bailzie, chamberlane, or trustee to the marquis, did so far countenance and converse with the saids persons, that they being challenged by some of the town of Douglas as disloyall persons, he was so far from apprehending or punishing of them that he threatened to punish the persons who challenged them. It is answered that the alledgeance is both groundless and irrelevant, because, as to James Clelland, he could not come back, being killed before Bothwellbridge, and as to James Wilson, he never sawe him till October 1681, at his father's buriall; and the defender had no power to apprehend any person, for it is offered to be proven that the town of Douglas has two bailzies elected by themselves, and David Weir is the marquis barron bailzie, and Samuel Douglas is his chamberlane; and all the trust the defender had in the marquis affairs since the year 1679, was only to receive and take in the chamberlane's accompts, so that he not having any charge, nor office, nor jurisdiction under the marquis, it was not in his power nor incumbent to him to apprehend or present any of the persons to justice that were suspect to be accessorie to the rebellion. As to the 2d additional lybell, whereas it is alledged that the defender did receipt and maintaine James Wilsone within the house of Blackwood, that he gave him commission to sell his nolt and sheep. The former answer is opponed; and whereas it is alledged that he sold him goods in October last in Skirline fair; it is offered to be proven the defender at that time was in England both the months of August and September, and the defender could not recept him in the house of Blackwood, since he had no interest in the house nor residence there.

And as to Alexander Gilkerson the same defence is repeted, that he publictlie went to kirk and mercat and publictlie conversed with all the countrey people, and is not in the Porteous Roll, but has been the marquis tenant above thir 12 years, by paste, and seeing it is known and most justlie acknowledged by the lybell that the marquis is a person of untainted honour and loyaltie, and if his majestie's most honourable privy councill did not only converse with the said Alexander Gilkerson but set him a tack of his lands, it could be no cryme in the defender lykewayes to converse with him. And as to Adam Thomson, he is lykewayes a publict merchant who ordinarly goes to publict fairs and mercats, and whereas it is alledged that when Claverhouse and captain Inglis troups were in the countrey to search for rebells, the defender did secure the said Adam Thomson in the castle of Douglas untill they were away, it is most groundless, for the defender dwelling at Edinburgh, it is offered to be proven that he was at Edinburgh the tyme these troups were at Douglas.

And as to Matthew Fleyming, the former answers are lykeways opponed, that he went publictlie to kirk and marcat, and it is deneyed that he had any pension from the marques, since the year 1679; and whatever persones the marques is pleased to entertaine in his service or on his ground, that can never inforce a cryme against the defender. And as to James Lawrie, whereas it is alleadged, that the defender did not only correspond and intercomon with him, but caused him sitt as clerk in the marques's court, and did so farr impose upon the marques as to procure him his friendship; It is answered, that it is strange the marques, being a person of so great honor and undoubted loyaltie, that it should be so much as imagined that he could be so farr influenced or imposed upon as that he could be induced to entertain any persone, or make him clerk of his court, that was knowen to have accession to the rebellion; so that if it were no more but this alone, that it consisted with the marques knowledge, that the said Adam Thomson or any other of the persones before mentioned, did publictlie converse with the people and countrey of Douglas round about, or that the marques did imploy them in his service, is a sufficient vindication to the defender, that it could be no cryme in him to converse with the said persones, and the defender is not concerned whom the marquis imploy to be clerk of his court, seeing he had no charge nor jurisdiction under the marques, since the year 1677; David Weir being barron bailzie since that time. As also it is offered to be proven, that the said James Lowrie since the rebellion at Bothwellbridge, did publictlie execute the office of procurator fiscall before the sheriff court of Lanerk; and therefor seeing the sheriff did take no notice nor apprehend him as having accession to the rebellion. If they did suffer him publictlie to converse and appear befor their courts, it can never be imputed as a cryme to the defender to converse with him; and if such pretences were sustained, no man would be secure. And as to John Cochran it is offered to be proven that he did take the bond and is insert in the councills roll of those who took the same. As also he did obtane a certificate under the hands of generall major Monro, who was then generall of his majesty's forces, allowing him to return home. And as to Robert Fleyning, he is not a tenent: As also he is not in the Porteous Roll of those who are declared fugitives.

His majestie's advocat takes instruments upon production of the tutorie in favours of the pannall, dated 9 July, 1681.

His *Majestie's Advocate* replyes, That as to John Rae elder, and Blackwood's other tennents, ther having given in petitions to the privy councell, no respect can be had to them, since there is no delyverance upon the bills; and tho the councell had accepted of their bills after Blackwood's intertaining of them, their acceptance cannot be drawn back so as to defend Blackwood as to what he did before the councell's allowance.

As to all the defences, founded on the severall persones their being at kirk and marcat, and keeping a public change and conversing

with the forces, it is answered, that all this is alreadie proponed and repelled, and it is rather ane aggravation of Blackwood's guilt, for their seeing Blackwood entertaine them upon his land constantly and openly, and imploying them as his factor; did encourage extreamlie the rest of the countrey who were less judicius, and no such reasone to be informed, and if this were allowed, the worst countreys should be in the best condition; and the being debauched universallie in their principles should make them kings, and put them in a condition to give remissions. As to Wilson's being let pass, by his majesty's advocate and solicitor, it is answered, that they could not take notice of his being in the rebellion, but only of his being a witness, for which they took a bond for his appearance with a cautioner, nor is his majestie's advocate or any else lyable, except he had recept him, which is the cryme here lybellit. And as to the other defences proponed they are contrare to the lybell, and to the interloquitor already given; and so ought to be repelled. As to Cochrane's taking the bond, the same is relevant, and his majesty's advocate passes from that part of the lybell.

Interloquitor.

The lords having considered the debate, finds the dittay relevant as to John Rae elder, as being upon Blackwood's lands, and conversing with him prior to the taking of the bond and certificate produced, dated the third November, 1680, and sustains the defence, since the taking of the bond, to elid the dittay. As to John Cochran, the lords sustaine the defence to elid the dittay.

As to James Willson, repells the defence proponed for him in respect of the other circumstances lybelled. As to Alexander Gilkerson, Adam Thomson, Matthew Fleyming, James Lowrie, and Robert Fleyming, repells the haill defences proponed for them in respect of the lybell, and repells the haill other defences proponed for the pannall.

Intran William Lowrie of Blackwood, indyted and accused for harbouring, recepting, and corresponding with rebells, in manner mentioned in his dittay.

William Lowrie of Blackwood, being requyred before probation, to declare whether or not he was guiltie of they crymes lybellit, declares, that as to the probation, he comes in the king's will. *Sic subscribitur,*

WILL. LAWRIE.

The Probation.

His majesty's advocate for probation, conforme to the lords interloquitor, adduced the Porteous Roll and books of adjournall. bearing that John Rae elder, in Blackwood, John Rae his sone, James Wilsone in Town head of Douglas, Adam Thomson in Marrgill and Matthew Fleyming in Douglas, were declared fugitives, denunced rebells, and put to the horne for rebellion; and that James Lowrie was in the rebellion, produced the books of adjournall bearing, that upon the 21st of March, 1680, he was persewed befor the justices, for rebellion, found guiltie by ane assyse, and forfault and ordained to be execute to the death for the same.

Thomas Pott in Woodhead, aged twenty-four years, or thereby, unmarried, purged and sworn; depons, That he knows John Rae, elder and younger, Thomas Allan and Robert Fleyming, were tennants and residenters in and upon the lands of Blackwood, before and after Bothwellbridge, and ay and whill they were brought prisoners to Edinburgh in March last. And that John Rae younger, stayed in house with his father and William Lowrie of Blackwood, came severall tymes to the saids lands, and had a family there: And that his servants and daughters dwelt there; and that he saw John Rae elder with the rebells at Hamilton. And this is the truth as he shall answer to God. Depons, That he never knew Blackwood to stay one night on his lands of Blackwood since the rebellion.

Sic subscribitur, THOMAS POTT.

George Mair in Lesmahago, aged 24 years, married, purged, and sworne; depons, That by report of the countrey, John Rae elder and younger, James Wilsone and Clelland wer in the rebellion, and the two Raes lived on the lands of Blackwood, and Blackwood had daughters and servants there, and heard that courts were keept, and that Blackwood came some tymes to these lands and stayed all night with his daughter-in-law and servants. And this is the truth as he shall answer to God.

Sic subscribitur, GEORGE MAIR.

Thomas Taylfer in Rogerhill, aged 63 years, married, purged, and sworne; depons, That be report of the countrey, John Rae elder and younger wer in the rebellion, and that they were tennants and residenters on the lands of Blackwood till Mertinmass last or thereby, and that Thomas Allan and Robert Fleyming were tennants there, and repute to have been in the rebellion. And this is the truth, as he shall answer to God.

Sic subscribitur Perth I. P. D.

John Rae, smith, in Blackwood, aged sixtie years, purged, sworne; depones, he has lived constantlie on the lands of Blackwood, since Bothwellbridge, and pays ane hundred pounds of rent, and payed ane hundreth pounds before Mertinmass last, and that his sone John Rae younger stayed in the house with him since the rebellion, depones, Thomas Allan, Robert Fleyming, lived allwayes on the lands of Blackwood since the rebellion, till this tyme, and that he saw them in company with the rebells at Hamiltoune; depones, Blackwood's daughters and servants lived on the lands of Woodhead and Blackwood, and that Blackwood came sometymes there to hold courts, and that he sawe Thomas Allan, and Robert Fleyming at the courts, when Blackwood was

keeping courts there, and this is the truth as he shall answer to God.

Sic subscribitur, JOHN RAE.

James Somervaill, smith in Douglas, aged 36 years, married, purged and sworne, depons, he sawe James Cleilland, Matthew Fleyming, James Whyte, and Adam Thomson with the partie, that took away the cannon from Douglas, and they took away a black horse, pertaining to Blackwood, and heard Cleilland when he got upon the horse say, that Blackwood knew well enough how to be paid of the horse; and that the report of the country was, that Blackwood having got a piece of land from James Cleilland's father, the pryce of the horse was to be allowed in the first end of the pryce of the land. Further depones, that he heard Adam Thomson say, That when Claverhouse and captain Inglis troups, or commandit parties went, that the pannell gave him warrand, to goe into Douglas Castle, and have his dyet there the while he stayed, for his security till the parties were gone, and that he heard him bragging of it when he was drinking. But being interrogate if he was drunk, he said no, and this is the truth, as he shall answer to God.—*Sic. Sub.*

JAMES SOMERVAILL.

John Miller, servant to the marquis of Douglas, depones, That be report of the countrey, James Wilsone was in the rebellion, and, that more nor a twelve month after he sawe the pannel, and James Wilsone conversing together, beside the Castle of Douglas: And this is the truth, as he shall answer to God.—*Sic. Sub.* JOHN MILLER.

Archibald M'Lellan, cook in Douglas, aged 50 years, married, purged and sworne, depons, That be report of the country, James Wilsone, Adam Thomson, and Matthew Fleming we e in the Rebellion, and that Wilsone and Thomson were certainlie there, depons, that since the Rebellion within thir two years, he saw James Cleilland and the pannel walking and speaking together, in the town of Douglas, and severall tymes he has seen Matthew Fleming and Blackwood speak together in Douglas, and this is the truth, as he shall answer to God.—*Sic. Sub.*

ARCHIBALD M'LELLAN.

Master *John Anderson*, servant to the marquis of Douglas, aged twenty eight years, unmarryed, purged and sworne, depones, he knows James Wilsone, and of late he has heard he was in the Rebellion, and that he saw him converse with Blackwood two severall ... once in the castle of Douglas, about ... last, debateing anent religeon, and ... tyme in the Tolbuith of Edinburgh, ... saw him goe into Blackwood's roome since Blackwood was in prison, and did not hear what they spoke, and this is the truth, as he shall answer to God.—*Sic. Sub.* J. ANDERSON.

Samuel Douglas of Helslyde, aged threttie years, marryed, purged and sworne, depones, that since Bothwellbridge he has seen the pannel at the house of Blackwood, when his daughters and servants were there, depones, he sawe the pannal and James Wilsone twice converse together since the Rebellion, once at the gate of Douglas, and another tyme in the Tolbuith of Edinburg, since Blackwood's imprisonment. Depones, he has seen Alexander Gilkersone converse with Blackwood, both in Douglas and Edinburgh, depones he has seen him severall tymes speaking with Matthew Fleyming, as he did with other persons of his ranke. Depones, he has seen Blackwood converse with James Lowrie a year and a quarter since or there by, but cannot be possitive of the tyme, and this is the truth, as he shall answer to God.—*Sic. Sub.* SA. DOUGLAS.

Davie Weir, Bailly in Douglas, aged fyftie six, marryed, purged and sworne, depones, James Cleilland, Adam Thomsone and Matthew Fleyming were in company with the rebells, that took away the cannon from Douglas, and hes seen Blackwood converse with Alexander Gilkersone in the towne of Douglas, and lykewayes with Matthew Fleyming and James Wilson since the Rebellion, and sawe him lykewyes converse with James Lowrie, clerk of Douglas, severall tymes since the Rebellion, since which tyme he hes lykewayes acted as clerk, untill he was declared rebell. And that he knew no other write any tacks or the lyke since the rebellion till he was declared rebell, and this is the truth, as he shall answer to God.—*Sic. Sub.* DA. WEIR.

James Thomson, servant to the marquis of Douglas, aged twenty four years, unmarryed, purged and sworne, depones, he has seen James Wilsone severall tymes, conversing with Blackwood at Douglas since the Rebellion, and has lykeways seen Alexander Gilkersone, Adam Thomson, and Matthew Fleyming converse with Blackwood severall tymes since the Rebellion. Depons, he has seen Blackwood often converse with James Lowrie clerk of Douglas, and that he employed him to write tacks, assedations and other writes, and that he ordered Matthew Fleyming ordinar allowance of meal to be given him in summer last, and sawe him receive it; and this is the truth, as he shall answer to God.—*Sic. Sub.* JAMES THOMSON.

Ninian Inglis, officer in Douglas, aged 43 years, marryed, purged and sworne. Depons, that at he taking of the cannon, there was James Cleilland, James Wilsone, Adam Thomson, and Matthew with the rebells that were then in arms, and Blackwood and James Lowrie have frequentlie conversed together since the rebellion, and that Blackwood imployed him to write tacks, and discharges a year and a half after the Rebellion, as he had done before, and that he continued clerk as he had done before; and this is the truth, as he shall answer to God.—*Sic. Sub.* NINIAN INGLIS.

John Cochran in Rocheids, aged thretty six year, marryed, purged and sworne. De-

pones, he was at the Rebellion, but tooke the bond tymeouslie, and that the depohent himself and the two Rayes lived on Blackwood's lands since the Rebellion, since they were brought in prisoners in March last, and that Robert Fleyming lived ther lykewayes, and this is the truth as he shall answer to God, depones he cannot write.—*Sic. Sub.*

PERTH, J. P. D.

The Lords ordaines the assyse to inclose, and returne their verdict to-morrow at twelve o'clock.

CURIA JUSTICIARII, S. D. N. Regis tenta in pretorio burgi de Edinburgh, septimo die mensis, February 1683, per nobilem et potentem Comitem Jacobum Comitem de Perth Justiciarium Generalem, Richardum dominum de Maitland, Clericum et honorabiles viros Robertum dominum de Nairn, dominos Jacobum Foulis de Collingtoun, Davidem Balfour, Rogerum Hog de Harcarss, et Alexandrum Sexton de Pitmedden, Commissionarios Justiciarii, dict. S. D. N. Regis.

Curia legitime affirmata.

Verdict.

The assyse all in one voyce by mouth of James Murray of Skirline, ther Chancellour, finds the pannal William Lowrie guiltie of herbouring, and conversing with declared Rebells and fugitives proven by the depositions of the witnesses, and also finds by his judiciall submission as to the probation, that he comes in the king's will.—*Sic. Sub.* JA. MURRAY.

Doom.

After opening and reading of the whilk verdict of assyse, the lords justice generall, justice clerks and commissioners of justiciarie, in respect thereof, be the mouth of James Johnstoun, dempster of court, decerned and adjudged the said William Lowrie, To be taken to the Marcat crose of Edinburgh, upon Wednesday the last of February instant, betwixt two and four o'clock in the afternoon, and there to have his head severed from his body, and his name, memorie and honors to be extinct, and his arms to be riven furth and delate out of the books of armes, sua that his posteritie may never have place, nor be herefter bruik or joyse any honors, offices or dignities within this realm in tymecoming, and to have forfault omitted and tent all and sundrie his lands, heritages, tenements and rents, offices, titles, dignities, tacks, steadings, roumes, possessions goods and gear whatsomever pertaining to him, to our soveraigne lord to remaine perpetualie with his highness in propertie.—Which was pronounced for Doom.

302. The Trial* of JOHN HAMPDEN,† esq. at the King's-Bench, for a High Misdemeanor: 36 CHARLES II. A. D. 1684.

JOHN Hambden, esq. being brought up by Writ of Habeas Corpus, from the Tower of London, on the 28th of November 1683, and there being an Indictment preferred against him for Misdemeanor, his majesty's Attorney-General prayed, that he might be arraigned upon it, which was done in this manner.

Cl. of Cr. 'John Hambden, You stand 'here indicted by the name of John Hambden, 'late of the parish of St. Giles in the fields, in 'the county of Middlesex, gent. for that you 'being a pernicions and seditious man, and a 'person of a wicked mind, and of an impious, 'unquiet, and turbulent disposition, and con- 'triving, practising, and falsly, unlawfully, un- 'justly, maliciously, turbulently, and sedi- 'tiously intending the peace of our sovereign 'lord king Charles that now is, and the com-

* From a pamphlet entitled, "The Trial and Conviction of John Hambden, esq. upon an Indictment of High Misdemeanor, for contriving and practising to disturb the peace of our sovereign lord the king, and stirring up Sedition in this kingdom. Before the right honourable sir George Jeffreys, knight and baronet, lord chief justice of his majesty's Court of King's-bench, and the rest of the reverend judges of that Court, holden at Westminster, the 6th day of February, 1683."

'I do appoint Benjamin Tooke to print the 'Tryal of John Hambden, esq. and order, 'That no other person presume to print the 'same. GEO. JEFFREYS.'

† "Hambden was now the only man of the six that was left. Yet there was nothing but Howard's evidence against him, without so much as any circumstance to support it. So since two witnesses were necessary to treason, whereas one was enough for a misdemeanor, he was indicted of a misdemeanor, though the crime was either treason or nothing. Jefferies, upon Howard's evidence, charged the jury to bring him in guilty: otherwise, he told them, they would discredit all that had been done before. So they brought him in guilty. And the Court set 40,000*l.* fine on him, the most extravagant fine that had ever been set for a misdemeanor in that Court. It amounted indeed to an imprisonment for life." Burnet's History of his own Times, vol. 1, p. 576. See in this Collection his Trial for Treason, Dec. 30th, 1685. See, too, what Burnet says of him as it is inserted in the Introduction to the Trials for the Rye-House Plot, p. 503, of this volume.

'mon tranquillity of this kingdom of England 'to disquiet, molest, and disturb, and, as much 'as in you lay, sedition within this kingdom 'of England to incite, stir up, and procure, 'and the government of our said lord the king 'in this kingdom of England into danger to 'bring: and that you the said John Hambden, 'your most impious, wicked, and seditious in-'tentions aforesaid to fulfil and perfect, and 'bring to effect, the last day of June, in the '35th year of the reign of our said sovereign 'lord the king that now is; and divers other 'days and times as well before as after, with 'force, and arms, &c. at the parish of St. 'Giles in the Fields, in the county of Middle-'sex, unlawfully, unjustly, maliciously, and 'seditiously did assemble yourself, meet, con-'sult, conspire, and confederate with divers 'evil-disposed subjects of our said lord the 'king to the jurors unknown, and with the said 'persons did treat concerning your said most 'wicked and seditious compassings, imagina-'tions, and purposes aforesaid, to be executed, 'fulfilled, and brought to effect; and further 'that you the said John Hambden, your most 'wicked, impious, and seditious contrivances, 'practices and intentions aforesaid to fulfil, 'perfect, and reduce to effect, then and there, 'viz. the last day of June in the 35th year 'aforesaid, and divers other days and times, as 'well before as after, at the parish aforesaid, 'in the county aforesaid, with force and arms, '&c. falsly, unlawfully, unjustly, maliciously, 'and seditiously did consult, consent, conspire 'and confederate of an insurrection within this 'kingdom of England to be made, and of 'procuring and providing arms and armed 'men to be prepared in divers places within 'this kingdom of England, your same most 'wicked, impious and seditious intentions and 'compassings aforesaid to fulfil and perfect, 'and that you the said John Hambden, your 'most wicked, impious, and seditious inten-'tions aforesaid to fulfil and perfect, and bring to 'effect afterwards, viz. the last day of June, 'in the 35th year aforesaid, at the parish 'aforesaid, in the county aforesaid, with force 'and arms, &c. falsly, unlawfully, unjustly, 'wickedly, maliciously, and seditiously, did 'consult, agree, and consent that a certain 'person to the jurors aforesaid unknown, 'should be sent into Scotland to invite and 'incite divers evil-disposed subjects of our said 'lord the king, of his kingdom of Scotland, to 'come into this kingdom of England to advise 'and consult with you the said John Hambden, 'and others the aforesaid evil-disposed subjects 'of our said lord the king in this kingdom of 'England, concerning aid and assistance to be 'expected and supplied out of the said king-'dom of Scotland, your said most wicked, im-'pious, and seditious intentions and compass-'ings aforesaid to fulfil, effect, and promote, in 'manifest contempt of the laws of this kingdom 'of England, to the evil and most pernicious 'example of all others in the like case offend-'ing, and against the peace of our said so-'vereign lord the king, his crown and dig-'nity.*'

Cl. of Cr. How sayest thou, art thou guilty of this high misdemeanor whereof thou standest indicted, and hast been now arraigned, or not Guilty?—Mr. *Hampden.* Not Guilty.

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* The Indictment in Latin is given in Tremaine's Pleas of the Crown, p. 37, thus:

REX *versus* HAMPDEN.

"Midd. *ss.* Quod Johannes Hampden nup' de paroch', &c. gen' existen' homo perniciosus seditiosus ac p'son' prave mentis necnon impie inquiet' et turbulen' disposition' ac machinans practicans et falso, illicite et injuste malitiose turbulent' et seditiose intenden' pacem dict' Dom' Regis nunc et communem tranquillitatem hujus Regni Angl' inquietare molestare et p'turbare et quantum in ipso fuit seditionem infra hoc Regn' Angl' suscitare movere et periculo p'curare et gub'nationem dict' Dom' Regis in hoc Reg' Angl' an inferre Quodq; p'd' J. H. ad nequissimas nefandissimas et seditiosas intention' suas p'd' p'implend et p'ficiend' et ad effectum redigend' ult' die Junii Anno Regni, &c. 35 et diversis al' diebus et vicibus tam antea quam postea Vi et Armis, &c. apud paroch', &c. illicite injuste malitiose et seditiose se assemblavit conveniebat consultabat conspirabat et confederabat cum diversis male disposit' subdit' dict' Dom' Regis jur' pred' ignot' et cum eisdem tractabat de eisdem suis nefandis et seditiosis compassation' imagination' et proposit' pred' exequend' p'implend' et ad effectum redigend. Et ulterius pred' J. H. ad nequissimas nefandissimas et seditiosas machination' practication' et intention' suas p'implend et ad effectum redigend' adtunc et ibidem scil't' ult' die Junii Anno Regni, &c. 35 suprad' et diversis al' diebus et vicibus tam antea quam postea apud paroch' pred' in Com' pred' Vi et Armis, &c. falso illicite injuste malitiose et seditiose consultabat consulebat conspirabat et confederabat de insurrection' infra hoc Regn' Angl' habend' et de procuration' et provision' armor' et Hominum armator' preparandor' in diversis locis infra hoc Regn' Angl' ad easdem nefandissimas nequissimas et seditiosas intention' compassation' imagination' et proposita sua pred' perimplend' et p'ficiend' Quodq; p'd' J. H. ad nequissimas nefandissimas et seditiosas intention' suas p'd' p'implend et p'ficiend' et ad effectum redigend' postea scil't' dicto ult' die Junii Anno, &c. 35 suprad' apud paroch' pred' in Com' pred' Vi et Armis, &c. falso illicite injuste nequissime malitiose et seditiose consultabat agreabat et consentiebat Quod quedam persona jur' p'd' ignot' mitteretur in Scotiam ad invitand' et incitand' diversos male disposit' subdit' dicti Dom' Regis de Reg' suo Scotie ad veniend' in hoc Regn' Angl' ad advisand' et consultand' cu' prefat' J. H. et prefat' al' male disposit' subdit' dicti Dom' Regis in hoc Reg' Ang' de auxilio et assistanc' expectand' et supplend' e dicto Regno Scotie ad sus-

Upon which Plea issue was joined between his majesty's Attorney General, on behalf of the king and defendant, and bail was then taken for the defendant's appearance the next term.

Hillary term 35 and 36 Car. 2di Reg. In the beginning of the term, sir Thomas Jenner, knight, his majesty's serjeant at law, and Recorder of the city of London, moved for a trial at the bar, in the case between the king and Mr. Hampden, which was by the Court appointed to be on Wednesday the 6th of February in the same term, when the Court proceeded to the trial as follows.

Cl. of Cr. Call the defendant John Hampden.

Mr. *Williams.* He appears.

Cl. of Cr. Gardez votres Challenges. Call sir Charles Gerard.

Crier. You shall well and truly try the issue between our sovereign lord the king and John Hampden, gent. and a true verdict give according to your evidence. So help you God.

Cl. of Cr. Sir Charles Gerard, jur'
Roger Jennings, esq jur'
Henry Hodges, esq. jur'
Joshua Galliard, esq.

Mr *Williams.* We challenge him for the defendant.*

L. C. J (Sir George Jefferies) What is your cause of Challenge?

Mr. *Williams.* If your lordship please to let him go through the pannel, we will shew cause if there be not enough left without him.

L. C J. No, shew your cause now, it being against the king.

Mr. *Williams* He has an employment under the king, he has an office in the forest, and that we say is our cause of challenge.

L. C. J What then if he have?

Mr. *Williams* My lord, we suppose then he is not an indifferent person to try this cause.

L. C. J. Ay, let me hear that now proved and defended by any gentleman of the long robe, that that is a good cause of challenge. Shew me what law there is for it.

Mr. *Williams.* To be of the king's robe, or pay, or salary, is an exception in any case wherein the king is concerned.

L. C. J. Shew me any law for that if you can, Mr. Williams, I know you are a lawyer.

Mr. *Wallop* It is the opinion of my lord Coke in his Institutes, that it is a good cause of challenge.

L. C. J. But there is the opinion of all the judges in Henry the 6th's time against it.

Mr. *Wallop.* It is, my lord, fol. 156.

L. C. J. But I can cite you three or four books, and you have them all together in Roll's Abridgment, title Challenge, where he sets down four books one after another, that it is no cause of challenge, even to be the king's tenant, and there is a great deal of reason for it. For if that were a good cause of challenge, mark the consequence, then all persons that hold lands in England, hold them mediately or immediately of the king, and so the king could have no freeholders to be jurymen in his cause.

Mr. *Williams.* This is a more special cause of challenge than that.

L. C. J. What can be greater than that of being the king's tenant?

Att. Gen. (Sir Robert Sawyer.) Especially when all the land of England was held of the crown as originally it was.

Mr. *Trevor.* My lord, in 2d Rolls 646. Tit. Trials, there is the express opinion of my lord Rolls, that to be of the livery, or a menial servant of the crown, is a good cause of challenge.

L. C. J. And look you but in the first case in the first part of the Abridgment, title Challenges, where he mentions three or four books to the same purpose, and it is quite otherwise.

Mr. *Williams.* My lord, in that of first Rolls, he only cites some books, but the other is his own opinion.

L C. J. Well, make out your fact if you have a mind to it; but it is well known, that neither Mr. serjeant Rolls, nor my lord Coke, when he delivered that opinion, are to be reckoned such authorities in crown matters

Mr. *Williams.* We will ask him, my lord, if you please, I suppose he will not deny it.

L. C. J. No, make out your fact if you will have any benefit by it, it is only a challenge to the favour which ought not to be in the king's case. I am very glad that we are now to debate this matter with men of the robe, because we have had a strange sort of notions and reflections spread abroad of late, as though the judges now-a-days gave strange sort of opinions, and as though persons that had been blemishes at the bar, were preferred to do strange things when they came upon the bench; but truly I wonder to hear that it should be a doubt, when at the same time that which we gave as our opinion about one particular challenge, that is as to freeholders, it was the judgment of all the judges, that that was no challenge, and all the counsel that were concerned in that case know it was the opinion of all the judges. But now if we meet with lawyers, I shall be glad to have the matter fairly argued and debated, and pray shew me what law or reason is for it.

Mr. *Wallop.* Certainly, my lord, there is a great difference betwixt the general allegiance of all men, and so of a general tenure, and the dependence of any particular person who is a menial servant and receives wages of the king.

L. C. J. I would desire to know of you, Mr. Wallop, which is greater challenge, to say such a one is a tenant, or such a one is immediate servant to J. S

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dem nequissimas nefandissimas et seditiosas intentiones et compassation' suas 'pred' perimplend' faciend' et promovend' in contempt' legum hujus Regn' Angl' manifest' in malum et perniciosum exemplum omnium al' in tali casu delinquen' Ac contra pacem dict' Dom' Regis nunc coron' et dignitat' suas, &c."

* As to this, see Hawkins's Pleas of the Crown, book 2, ch. 43, sect. 33, and also sect. 36.

Mr. *Wallop.* There is a great difference, my lord, I think, between an immediate tenant, and the general tenure of all subjects.

L. C. J. But certainly the law is thus, if he were an immediate or a mediate tenant to any but the king, if his lord were party to the suit, it would be a good challenge, but the being tenant to the king is no good challenge, in the king's case.

Mr. *Williams.* My lord, I take it, the act of parliament that takes away the Court of Wards and liveries hath altered the law as to that matter of tenure; for now we hold in socage, and that other tenure is destroyed that was between the king and his subjects.

L. C. J. But pray how comes it to be a challenge now that was not one before? Does that act of parliament make it a good cause of challenge? If it does, shew it. I tell you the old books are against it.

Mr. *Williams.* I speak, my lord, to the tenure, that that is nothing at all now to be objected, because all is now in socage.

L. C. J. I would not have Mr. Attorney insist upon a juryman, but yet withal I would not have it gone away with as law, that it is a good cause of challenge.

Mr. *Wallop.* My lord, we finding in some cases that are in our books, that it is held to be a good cause of challenge, lay it before the Court.

Att. Gen. How many hundred errors do you find in my lord Coke, notwithstanding all his learning?

L. C. J. I say, if I was Mr. Attorney, I would not contest for any particular man to be juryman, I speak that as my advice, but I would not have it taken for law, nor would I have it broached abroad, that though the judges now were of one opinion, yet the law truly was of another.

Mr. *Jones.* If all that receive salary or wages from the king, are not to be jurymen in the king's causes, then all the deputy lieutenants and militia officers, which generally are the most substantially freeholders, are excluded from being jurymen.

Just. *Withens.* Who will say so, Mr. Jones? No lawyer in England surely will say so.

Mr. *Williams.* Offices where there is no profit, will not be the same exception.

Att. Gen. But he is no menial servant of the king's.

Mr. *Williams.* What is he then?

Mr. *Wallop.* We hear that he is keeper of one of the king's Forests, and has a fee for it.

Mr. *Williams.* Well, we will ask him upon a *voyer dire.*

Att. Gen. My lord, the fact is quite otherwise, and I desire they may make it out.

L. C. J. Truly, I think it is not *tanti* to insist upon any particular man, but I find we are in an age that is so full of cavils, that if we act but according to the precedents that went before us, we are thought to act as originals, and to make new laws, when we only follow the rules that we have received from our predecessors. And I say there was no such challenge at common law, that ever I read of in any of our books, nor is it any challenge by the best authorities extant.

Mr. *Jones.* I desire them to shew me any such precedent, that any man was challenged by one that was tried at the suit of the king, for a challenge to the favour, but we must do unprecedented things, or else there will be no satisfying of some men.

Att. Gen. I would fain know, what one opinion in a straggling book is against the current of all our law?

Mr. *Williams.* Which do you call a straggling book, Mr. Attorney? My lord Coke's Institutes, or my lord Roll's Abridgement?

L. C. J. I say the better opinion of the books is on the other side, and the greater number too.

Att. Gen. First of all, I do know of my own knowledge, he is no menial servant.

L. C. J. Mr. Attorney, I do debate it for learning sake, truly I know not the man, nor whether he be the king's servant, or not, but I speak against allowing the challenge, that if he be set aside, it may not be taken as a precedent, and so pass for law that the king's servants cannot be jurymen. I would have you quit the man by consent, but not as a force put, as though the law were so, for the law, I think, is otherwise.

Att. Gen. He is none, my lord, they mistake.

L. C. J. Nay, I know nothing of the man, I tell you only what I think.

Mr. *Wallop.* He receives wages, or a fee from the king for his office.

Just. *Withins.* I would never, for my part, while I live, nor never did, while I was a practiser, stand upon any particular juryman.

Att. Gen. He may be a juryman by law sure.

L. C. J. There is no doubt of it, Mr. Attorney.

Att. Gen. My lord, if your lordships have given your opinion, I desire he may stand by.

L. C. J. Well, Mr. Attorney waves him, let him stand by.

Att. Gen. But for no reason that has been offered.

L. C. J. No no, I do not hear any thing of reason offered for it.

Cl. of Cr. Mr. Galliard, you may go down.—Thomas Harriot, esq. jur'—Thomas Earsby, esq. jur'—William Avery, esq. jur'—John Sharp, esq. jur'—Richard Shoreditch.

Mr. *Williams.* We challenge him for the defendant.

L. C. J. What is your cause of challenge?

Mr. *Williams.* There is the same exception to him.

L. C. J. If Mr. Attorney will consent, with all my heart.

Att. Gen. No, we humoured you in one, we will not humour you any more.

Mr. *Williams.* Nay, here is something more clear for us, he is a serjeant at arms attending his majesty.

Just. *Withins.* You know our opinions already, Mr. Williams, unless Mr. Attorney consent, we cannot do it.

Mr. *Williams.* We only acquaint Mr. Attorney with it, we must submit to your rule, he is certainly serjeant at arms, he came in the place of Dereham that let my lord Grey escape.

Att. Gen. Pray prove it, I do not know it for my share.

Mr. *Williams* Will you ask him the question?

Att. Gen. Pray prove it. Are we to gratify your client? pray let him better instruct his counsel.

L. C. J. If Mr. Attorney consent not, then he must be sworn.

Att. Gen. If there be enough without him that do appear, let him stand by.

Cl. of Cr. Stand down, Mr. Shoreditch—Charles Good, esq. jur'—

Att. Gen. That it may appear how fair things were carried, they would not strike out one of these men when they came before the Prothonotary, as they might have done.

Just. *Withins.* Truly that was not well done, to trouble the court when you might make your exceptions there.

Mr. *Williams.* We did not know it then, now we do, we offer it to the court.

Cl. of Cr. Samuel Rouse, esq. jur'—Hugh Squire, esq jur'—Nehemiah Arnold, esq jur'—John Bifeild, esq. jur'. Then the Jury were numbered, and the twelve sworn were these: Sir Charles Gerard, bart. Roger Jennings, Henry Hodges, Thomas Harriott, Thomas Earsby, William Avery, John Sharp, Charles Good, Samuel Rouse, Hugh Squire, Nehemiah Arnold, John Bifeild, esquires.

Cl. of Cr. Gentlemen of the jury, You that are sworn, hearken to your charge. The defendant John Hampden stands indicted by the name of John Hampden, of the parish of St. Giles in the Fields, in the county of Middlesex, gent. (*Prout* in the Indictment, *mutatis mutandis*)—To this indictment he has pleaded Not Guilty, and for his trial puts himself upon the country, and the king's attorney general likewise, which country you are; your charge is to enquire whether the defendant be guilty of the great misdemeanour whereof he stands indicted, or not guilty; if you find him guilty, you are to say so; and if you find him not guilty, you are to say so, and no more; and hear your evidence.

Then Proclamation was made for evidence in usual form.

Mr. *Holloway.* May it please your lordship, and gentlemen, you that are sworn, I am of counsel for the king upon this indictment. Gentlemen, the indictment sets forth, that the defendant being a seditious, malicious, evil-disposed person, and seditiously and maliciously intending to disturb the peace of the kingdom, the last day of June, in the 35th year of his now majesty's reign, and divers other days and times, at the parish of St. Giles in the Fields, in your county, did unlawfully assemble, and confederate himself with divers evil-disposed persons, subjects of our lord the king, and then and there, with those other persons did falsly, maliciously, and seditiously consult and conspire to make an insurrection in the kingdom of England, and to provide arms and armed men in divers places of the said kingdom. And the better to complete his evil intentions, the said last day of June, did consult and agree to send certain persons, to the jurors unknown, into Scotland, to invite several evil-disposed persons there to join in this conspiracy. This is the substance of the charge, and to this he says, he is not guilty; if we prove him so, we do not question but you will find it.

Att. Gen. May it please your lordship, and you gentlemen of this jury, Mr. Hampden stands indicted of an high misdemeanour, for conspiring, with several others, to raise rebellion within the kingdom, and to crave the assistance of the brotherhood of Scotland. Upon the face of the indictment, gentlemen, it appears to be a very high crime, and the matter of this indeed has been formerly in examination in other trials, and yet the party, you may observe, do not acquiesce in those trials, but think the persons accused lay under very great hardships, and that to a very great degree, as not having the advantage of counsel, nor to have their witnesses examined upon oath; and therefore, gentlemen, the king is pleased to go less in this case than in the others. That this gentleman, who is now before the court, may clear his innocence, if he has any witnesses to do it. And if there be any advantage that the having of counsel can contribute to his cause, he has that allowed him too.

The course of our evidence, gentlemen, will be this.

We shall prove to you that Mr. Hampden, with five other persons, (I shall name them) the duke of Monmouth, my lord Russell, Mr. Sidney, my lord of Essex, and my lord Howard, they met several times, (the particulars we shall give you an account of) one was at Mr. Hampden's house, another was at my lord Russell's, where they did contrive together, and took upon them to be a juncto, or a council of six, collected out of the wisest men of the kingdom, to consider how they might better the affairs of the nation, and how they might make a stir: for they thought there was no way possible otherwise of doing it, but by their joint councils to carry on a rising. And that they might do it the better, they resolved to crave the assistance of Scotland. Gentlemen, we shall give you an account of their consults and debates, and shall shew you, that at length they came to a resolution, that the rising was to be carried on jointly in London, and the several parts of the kingdom, in several countries at once. Then they came to think, and consider whether it were not best to send into Scotland, to draw them in too. And thereupon it was agreed by this juncto, that they would send

thither, and the management of it was committed to Mr. Sidney, to send some fit person into Scotland, to treat with the male-contents there; and the better to carry on this joint design, some of them were to come up to London. And they were to have a pretence to treat about going to Carolina, and the purchasing some shares in the plantation there, of which my lord Shaftesbury was a chief governor. We shall prove to you, gentlemen, besides all that I have opened, that the person to whom that trust was committed, Mr. Sidney, according to the duty that he had taken upon him, does employ one Aaron Smith, which all that know him, do know him to be a fit engine for such counsellors, and a fit instrument for such a conspiracy. We shall prove he actually was in Scotland, and that he went into Scotland upon this errand. And then we shall prove that those gentlemen that were sent to, and were the persons named in their consults to be treated with, came here soon after to town, and as soon as ever this plot was discovered, they fled and absconded themselves. Gentlemen, if we shall prove all this matter to you, I think it will be without any question clear, that this gentleman is notoriously guilty of this high misdemeanour. And indeed, if you observe it, one of the persons has given judgment against himself, the earl of Essex. But the party have been so diligent and officious as to fling that upon the government; but that matter we shall have before the court in judgment to-morrow. For two of the others they have received the judgment of the law; for two more of them the king has been pleased to take them into his mercy; the one is my lord Howard, who is summoned to appear here to day; the other is the duke of Monmouth, who has confessed all this matter, and has taken his pardon, and we have summoned him also to be here this day; that the world, if they will have their eyes opened (I mean the discontented world) may see there is nothing sought, but the peace and quieting of the kingdom. Gentlemen, if we prove all this matter to you, I shall be glad to hear the defence of the counsel, and the defence made by witnesses upon oath.

Solicitor General. (Mr. Finch.) My lord, we will call our witnesses, and first we begin with the duke of Monmouth.

Att. Gen. Call James duke of Monmouth.

Crier. James duke of Monmouth.

Att. Gen. Call him again.

Crier. James duke of Monmouth.

L. C. J. Was he served with a subpœna?

Att. Gen. My lord, we will prove we have served him in all places where he was like to to be met with; that we left subpœnas with his servants, who promised to deliver them to him.

L. C. J. Prove it.

Att. Gen. Where is Mr. Atterbury? Swear him. [Which was done.] Pray will you give the court an account, whether you did serve the duke of Monmouth with any subpœna? In what places you were to serve him, and who you left it with?

Atterbury. My lord, on Friday last was seven-night, I was commanded by Mr. Attorney-General, to carry a subpœna to serve upon the duke of Monmouth, and to go to his house at Moor-park, where it was generally discoursed he was. I did go and take a subpœna from Mr. Burton, by Mr. Attorney's order, and went to the duke's house at Moor-park. When I came there, the outward gate was locked, and I went to an house where the keys are kept, and having got the keys, I went down to the house, and I saw there one of his servants fothering of cattle; and coming up to him, I asked him if the duke of Monmouth was in the house. He told me, he could not well tell, whether he was or not, but he thought he was gone to London, for he saw the calash, and five or six horsemen with it, and they said in the house, that it was the duke that was gone to London. I asked if there were any servants that were nearer to his grace in the house, that I might speak with; they said, Yes, there was the house-keeper or steward, one Mr Rawkins, that attended upon the duke. I desired to speak with him, and he came out to me; I asked him if the duke was there? He seemed to be unwilling to give me an answer. I asked him the second time; but he did not say he was, or he was not. I told him then, I had a subpœna, which I brought with me by Mr. Attorney General's order to serve upon his grace, which was to require him to attend here this day, to testify his knowledge, in a case between the king and Mr. Hampden. He told me, Sir, said he, give me your subpœna, and I will take care the duke shall have it. He took it of me, and I came back to London presently. As soon as I came to town, I had a second subpœna given me to serve upon his grace, with which I went to the duke's house at the Cockpit. When I came there, I spake with the porter, I think his name is Johnson (but the porter he is, and I remember him a servant there many years). I asked him, if the duke were there? He told me he did not lodge there. I told him I had a subpœna to serve upon his grace to appear as this day, the same as I said at Moor-park. Says he, Mr. Atterbury, I will take care the duke have it to-night, or to-morrow morning early.

L. C. J. When was this?

Atterbury. It was of the same day, Friday was seven-night last. I was told afterwards by one that I met with, that the duke did lodge at Mr. Row s house, who is a servant to the duke, one of his gentlemen. He lives in the Pallmall, it is either his house or his lodging, but they call it his house. I had a third subpœna given me to the same effect. And when I came there, I asked for the duke, and a woman came to the door, Mrs. Manly (I think they call her), she seemed to make little answer to, what I said. Said I, Pray will you give this subpœna to the duke, or to Mr.

Row to give it the duke. She took it of me, and said, she would give it Mr. Row certainly to give to the duke. And yesterday, or the day before, I met Mr. Row at Whitehall, and says he to me, Mr. Atterbury, you brought a subpœna to my house a little while ago. Yes, Sir, said I, I did, had you it? Yes, I had the subpœna, says he. Then says I, I hope you gave the duke it? To that he made me no answer, but nodded his head, and smiled, and went away.

L. C. J. Now call his grace again.

Crier. James duke of Monmouth. [But he did not appear.]

Att. Gen. Call William lord Howard. [Who was in the court.] Pray swear my lord Howard. [Which was done.]

Att. Gen. My lord Howard, pray will you be pleased to give the court and the jury an account what you know of any meeting by the gentleman that is now accused, and the duke of Monmouth, my lord Russell, yourself and others, and when; tell what you know.

Lord *Howard.* My lord, in January last was twelvemonth, about the midst of January, I was called out by colonel Sidney, being then in my lodgings in Southampton-street, and carried by him to Mr. Hampden's house, I do not know what they call the street, but the same side of the way with the fine house that is in Bloomsbury———

Mr. *Jones.* By my lord Montague's house that now is, you mean?

Lord *Howard.* Yes, of the same side of the way. When I came there, there was my lord Russell, and the duke of Monmouth, colonel Sidney and I went together, Mr. Hampden was then in the room where they were. Afterwards came in my lord of Essex, this made up six. When they were there, we fell into discourses———

Att. Gen. Pray, my lord, before you come to tell the particular discourses, give an account how, and upon what grounds you came to have this juncto of six?

L. C. J. If you please, my lord, pray give an account of the preliminary passages.

Lord *Howard.* My lord, after the disappointment given to an undertaking that was begun by my lord Shaftsbury, which was in October or November before, in November he died. After that, truly I cannot say, but that colonel Sidney and myself might be, and were the two first that did give the rise to it. For being in discourse, we said it was absolutely necessary that there should be some council erected to give some steadiness to the motions———

L. C. J. My lord, I would not willingly interrupt you. But you seem to speak of a disappointment given to an undertaking by my lord Shaftsbury. Pray what was that undertaking?

Lord *Howard.* Your lordship has heard of that before, and know it very well.

L. C. J. Though we know it, the jury do not. They have not heard it judicially at least.

Lord *Howard.* Because it has been in the printed books, every body I suppose knows it.

L. C. J. But that they cannot judicially take notice of.

Lord *Howard.* That is something a long history, my lord.

L. C. J. Though it be, we must hear it.

Att. Gen. Pray make it as short as you can, my lord.

Lord *Howard.* So much as I can give account of is this. It was about the day after Michael's day that I came to my own house, having been before in Essex, and that I think was Saturday. The Monday following captain Walcot came to me and dined with me, and after dinner told me, my lord of Shaftesbury had left his house, and had betaken himself to a private lodging, and had hid himself from the rest of his friends; but had a great kindness for me, (which kindness truly I wish he had spared) and desired to see me. I took time to consider of it; but I bid him go back to my lord Shaftesbury, and tell him, if he had any thing of an extraordinary nature to acquaint me with, I would come and assist him all I could. He came the next day again, and shewed me to my lord Shaftesbury's lodging: He lodged then at one Watson's house, a citizen, I know not what street they call it; but it was in a little street down by Wood-street. And when I came to him, I found my lord Shaftesbury very much differing from what he used to be, which was more cautious; and presently he fell to tell me, that he was forced to withdraw himself from his own house, for fear of being attacked again by sham-charges and plots, and false evidence, as he had before: For now he said, he saw they had the possession of all juries, by having those sheriffs which were imposed upon the city, as he said, and he could not think his own life or any man's life safe; for to be accused was sufficient to bring his life into very great danger, and for that reason he had withdrawn himself to that private retirement; and being there he was resolved to make some speedy push, for recovering of the liberties of England; that there was preparation made in the city of several thousands of men, that were all in readiness to rise, and that for his part, he was resolved to be set on horseback; for get on horseback he could not; and that there were great numbers that were ready, when he did but hold up his finger, to be drawn together at any time: That divers had been drawn out of the country to join with them by insensible parties of horse, I think he named about fourscore or an hundred. Which since I found were to be headed by colonel Rumsey, upon the day of making and declaring the sheriffs; but finding there was nothing done, he withdrew himself and his man thither; but there was such a general preparation in the city, that if some lords did not unhandsomely desert them they should be in readiness for action quickly. I asked him who he meant? He told me, the duke of Monmouth and my lord Russell had very unhandsomely deserted him; for they

had promised and undertaken to be in readiness with men out of several countries in which they had an interest, he named Somersetshire, Devonshire, and Cheshire, I think, and that my lord Grey should be disposed of into Essex to do the same there, and if they had held on this resolution, it had been such a sure game, that it could not have failed: But says he, they are started, and say they cannot be in a readiness to do it. My lord, I very much wonder that those persons you named should engage in any design, and fail of performing what they promised! Says he, I will assure you it is so. And so he proceeded to speak several sharp things of the duke of Monmouth, upon the account of his ambition, that he thought to have all under his command: Which was a secret lurking ambition in him, that he said, he always suspected the duke to be guilty of. And now he found his suspicions true. That unless he might command all, he would do nothing. But for his part, since he found the matter so, he was resolved to go on alone, rather than fail in his design. Said I, my lord, I should be very forward to concur with you in any thing; but I wonder your lordship should step into an action of such danger, thus divided from those that are most likely to assist you in it. I cannot help it, said he, I have left my house, and must go on. My lord, said I, pray give me leave to go to the duke of Monmouth, and expostulate the matter with him, and I will come and give you an account again. Says he, it is to no purpose, I dare say Said I, my lord, pray let me go and try, for I would not have you divided, but I will promise you this, I will not tell him I came from you, but as from myself discourse it with the duke. Well, said he, if you will you may. This was upon Tuesday, I think the 3d of October, the 3d or 4th. So I went to the duke of Monmouth the next day, which was Wednesday, and finding him not at home at his house in Soho, and being told he was at Moor-park, I took an occasion to go to Moor-park, and I came there a little after dinner, and took him aside, and told him all this that I now have spoken about my lord Shaftesbury. Says he, I think the man is mad, what does he mean? We did undertake to do this, it is true; but not by that time he speaks of, and things are not ready, I know not what his own fears make him do, but he does act so preposterously that he will undo us all Said I, my lord, all that I shall desire is, that there may be an interview betwixt you, and discourse the thing with one another, or else it may be a thing of very fatal consequence for him to step into an action of this danger and concern while you are thus divided. With all my heart, says the duke, I would have nothing more, I desire to speak with him. This made me recoil back again to my lord of Shaftesbury the next day, and I told him all this, and desired he would give a meeting; says he, I see they are false then to say they did not engage; they were engaged, and that against this time too, the confirmation and swearing of the sheriffs; and now for me to meet with them, I know I shall run out into passion and anger, and therefore it is better omitted. Said I, my lord, I must positively insist upon it. I must have an interview between you, for it is a madness for you to go on thus, divided in so great a business. I could not prevail, he would not; but he told me if I would I might go to them from him, and let them know I had been with him; (for before I pretended to have it from a third hand, and not from my lord himself,) and if they would be in a readiness with what they promised from the country, he would ask nothing from the city, he would take that place upon himself, if they would perform their engagement for other parts; but he resolved to go on. So I went to the duke of Monmouth again, and told him, what he said, That I could not by any means get him to an interview. Says the duke, he is a strange man, I know not what to do with him, we will all be in a readiness as soon as we can; but it is impossible to do it so soon. I went to my lord of Shaftesbury again on the Saturday, and did then positively engage him that he would give a meeting to me, and the duke of Monmouth, and some others: And we appointed time and place; he appointed to come out in a parson's habit, and a black perriwig to his own house, which he thought the safest place, because he would not discover his lodging to any of them, for fear it should come to be known. With these instructions I came to the duke of Monmouth to prepare about it, and proffered him to be ready the next day at evening with my lord Russell to go to him. All this while I had not spoken to my lord Russell, but only to the duke of Monmouth. And the next day when I came from church to my own house, there met me a message from colonel Rumsey, who I understood by my servants had been there, and left his name, with this message, that he came to tell me, the gentleman that was to meet could not meet. This was so confused a matter, that I was impatient till I knew the meaning of it. I took my coach and went directly to the duke of Monmouth's again, and he told me, colonel Rumsey had been with him, and told him, my lord of Shaftesbury was apprehensive there were a great many Tories about his house, and he feared being discovered, and therefore had removed his lodging, and so could not meet; but we should hear from him in two or three days. So that was the last time that I saw my lord of Shaftesbury, or indeed, in a direct line, did hear from him; collaterally by Walcot I did afterwards hear; but by this means we were at a loss. After this the duke of Monmouth did tell me (for he did not own to me that he saw him, but indeed swore to me that he did not see him; but I find since he did.) That he would do what he could to prevent an untimely, dangerous undertaking. But after this it seems they had a meeting at Mr. Sheppard's house, where my lord Shaftesbury sent a message to him and my lord Russell; but the duke of Monmouth

only told me, that my lord Russell had met with him, and seen him; but he never owned that he had met him himself or seen him. About four or five days after, captain Walcot came to me, and told me, such a day was set for the rising. Upon which being startled, I had nothing to do, but recoil back to the duke of Monmouth, and endeavour to stop any rash proceedings; and it was stopped as I thought, and so it continued for two or three days, and at that time, which was in October, there was a rumour up and down whispered, as if something would be attempted; but what it was we did not know, but thus it went on for two or three days, and then it meeting with a disappointment upon the consultation at Mr. Sheppard's, my lord Shaftesbury took up his resolution to be gone, and went away to Holland, and died in Holland. This is the substance of that account which I can give of those former transactions.

Att. Gen. Now give an account of what was subsequent to this.

Lord *Howard.* This was in November. After this there being frequent conferences between colonel Sidney and me; for colonel Sidney by the way knew nothing of all this, and I was cautioned by my lord Shaftesbury, that I should not tell my friend Sidney any thing of it; and asking him the reason why I should not, Says he, I can't well tell; but you will wonder when I tell you, that his own friend major Wildman has barred him and would not let him know it. The gentleman is now dead; but I will assure you he did know nothing of this for a month after: for he was gone into the country; but after my lord Shaftesbury was dead, I told him the history of all these transactions, which he was before a stranger to. After this, when I had acquainted him with what had been intended in London, and what preparations had been made, and how what was intended had been suppressed, and in what posture affairs then stood; we then took up a resolution to form a council, that might for the time to come give such directions as might regulate the motions of this affair. Thereupon we began to think of the persons who they should be. He undertook to speak to my lord of Essex, and Mr. Hampden, and I was to bring the duke of Monmouth to a right understanding with him in it. So I went to the duke of Monmouth, and told him colonel Sidney did present his service to him, and would willingly wait on him, but that he thought it would do him hurt, because he was a person of such note, and thereupon so obnoxious that it might prejudice him to have him seen to come to him; and therefore if his grace would please to appoint any third place, he should be very glad to kiss his hand. Says the duke, I do not know any where truly to appoint. Why then, said I, I will tell you a place: Let us e'en go to his house (having before prepared colonel Sidney for it) and take him by surprise and dine with him, and then there will be the less suspicion; But, said I, you must not expect to be treated as the duke of Monmouth, because he does not expect you; but take him as a philosopher, and dine with him as he uses to dine at his own table. Says the duke of Monmouth, I care not for entertainment; I will go with you: And there at that time did the duke of Monmouth undertake to bring in my lord Russell and my lord of Salisbury. This was the only discourse preparatory to it that ever I knew of. Within a fortnight or three weeks after, nay, I think it was less than ten days after, colonel Sidney came to me, and told me, my lord of Essex was very forward in it. The duke of Monmouth would prepare my lord Russell, and my lord Salisbury; and he himself did not doubt, but Mr. Hampden was very willing to be in it too; and they had appointed a meeting at Mr. Hampden's house, and he would carry me thither to the house; and this was the first meeting that I knew of; and there we met all six.

Att. Gen. About what time was that?

Lord *Howard.* It was about the middle of January; and truly I think I could reduce it to a certain day or two by the persons where I lodged.

Att. Gen. What was debated there?

Lord *Howard.* When we came there every one discoursed what he would. There was a discourse of the time and places where to rise; but among other things it was resolved as a principal point, that there should be a preparation made for the design, by a treaty with those of Scotland, and an understanding settled with Argyle, and a messenger sent to my lord Argyle, and others. And before this was done, we could not be ripe for any resolution: But this must be speedily done.

L. C. J. Pray, my lord, give me your favour, I would not interrupt you; but to make things clear as we go, I desire to ask you, when you came first to Mr. Hampden's house, who spake first, when you were all met together?

Lord *Howard.* Every body discoursed what they pleased.

L. C. J. But who gave an account of the reason of the meeting? Will you please to recollect, and tell what you know, who began the discourse?

Lord *Howard.* Something introductive to it was said by Mr. Hampden, we being at his house, as it is natural to conceive for any gentleman at whose house people are met, to say, Pray let us sit down and talk of our business. Something leading and introductive was said by him.

L. C. J. Pray, my lord, as near as you can remember, will you give an account what was the thing he began to discourse of? Did he seem to take any notice, or have any knowledge of your meeting, and other things before?

Lord *Howard.* It was a general hint and intimation to us of the ends of our meeting, that we were there come to consult and advise one with another, how to put things into a better method and posture than formerly: and he

desired that we would sit down and discourse of these things. My lord, I would not charge myself with particulars positively.

Att. Gen. Upon what [illegible] bate and consult, my lord.

Lord *Howard.* Those were started severally. Some would speak of the time when it should be, whether it were not convenient now, or when. Others offered something concerning the places, whether it should be begun in the city or in the country, or both together. Others took it into consideration, what persons were to be prepared in the several counties to be assisting in it, that were probable to carry it on. And then some discoursed concerning the raising of money, and then what sum should be raised, and I think that was started by the duke of Monmouth; but I am sure the sum that he named was 20 or 30,000*l*. The last thing that was talked of, but which was concluded to be the thing principally to be taken care of, was the settling such a concurrence and correspondence with Scotland, that they might chime in at the same time, that so we might give as many diversions both from home and abroad as could be at one and the same time.

Att. Gen. My lord Howard, Did Mr. Hampden discourse of this matter?

Lord *Howard.* I cannot speak to the discourse of any one in particular; for I cannot say it was put to the vote as we formerly expressed it, but it may be said we were all consenting and concurring.

L. C. J. Did any of you dissent from the rising?

Lord *Howard.* No, no, my lord.

Att. Gen. Did any of you oppose it at all?

Lord *Howard.* No, no, that was discoursed of as a thing resolved.

L. C. J. I ask you this question, my lord Howard, Was there any sort of complaint made of the government, that it was uneasy and that occasioned you to enter into these debates?

Lord *Howard.* There was, I cannot say a complaint, because there was no person to complain to; but it was spoken of as a matter of great grievance, that such a force and violence should be put upon the city in their election of officers, and the tendency of that as to all juries, though I cannot distinctly remember the particular things.

L. C. J. You say you were talking of a messenger to be sent into Scotland to my lord of Argyle, and others to chime in with you in this matter, as you say, pray did you come to any resolution about that, and what did you resolve upon?

Lord *Howard.* That there should be one only at that time. And afterwards it was the matter of the debate at the next meeting, which was that meeting at my lord Russell's, which was about this time twelve-month, in February some time.

Att. Gen. How long after the first meeting at Mr. Hampden's was that?

Lord *Howard.* My lord, I think it was about a fortnight.

Att. Gen. Who was there?

Lord *Howard.* The same persons that met before. But then there was little spoken of but the business of Scotland.

L. C. J. Was Mr. Hampden there at the second meeting?

Lord *Howard.* He was there.

L. C. J. At my lord Russell's you say it was?

Lord *Howard.* Yes.

Att. Gen. What resolution did you come to then?

Lord *Howard.* Then we came to a resolution that somebody should be sent, and we began to discourse who was fit, and colonel Sidney he propounded Aaron Smith, to some of the company he was known, to others not; but those that did know him did approve of him as a fit person.

Att. Gen. To whose province was that committed of sending this person into Scotland?

Lord *Howard.* Colonel Sidney undertook it himself.

Att. Gen. Did the rest consent to it?

Lord *Howard.* Yes, nobody did oppose it, but left it to him.

L. C. J. Did you name the person then that was to go?

Lord *Howard.* He was not so named as to be with any solemnity approved or disproved; but it was left to colonel Sidney to manage it, and he naming Smith as a fit person, (he told us that by the by not to put it to the question for our approbation) and some of us knew the person, others did not. I was one that did know him, and did think him a very fit man to send.

L. C. J. Pray, my lord, who was the person? Be please to tell the jury so as they may know it.

Lord *Howard.* Aaron Smith.

Just. Withins. Had you any discourse with col. Sidney, my lord afterwards that he was sent?

Lord *Howard.* Yes, my lord.

L. C. J. Pray give an account of that.

Lord *Howard.* About three or four days after this meeting at my lord Russell's, I went to visit col. Sidney at his house, and while I was there in the room, he went to his cabinet, and out of drawers where there were 5 or 600*l*. in gold as I could guess, he took a good many pieces, I do not know directly how many; but he took out so many as he said were threescore guineas that he was going to carry to Aaron Smith; I went not in my own coach, and therefore went away with him in his coach, and he sat me down at Southampton-street at my own lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your meeting at my lord Russell's where you say you intrusted col. Sidney to send one in Scotland?

Lord *Howard.* I think it may be less than a week, four or five days, that I saw him carry the money. After this, he said, he had given

him this money, and was gone: And when he was dispatched, in a week after I was making inquiries after him, and col. Sidney said, he had not heard of him since he went away; but about a fortnight or three weeks col. Sidney said he had heard of him, that he was at Newcastle and staid there; but he wondered he could hear no more of him. I then went into Essex, and when I came back from thence, he told me he was come, but I had never seen him, not to this day; indeed I had once appointed a meeting with him at Mr. West's chamber; but something or other happened, we did not meet.

Att. Gen. We have done with my lord Howard; if they will ask him any questions, they may.

L. C. J. They know their time, when the king's attorney has done with any witness, then they may examine him if they please. If they will not, call your other witnesses.

Att. Gen. Will you ask him any questions?

Mr. *Jones.* No, no, by advice they are to ask him nothing.

Att. Gen. We shall give your lordship and the jury an account in the next place, that we have traced Aaron Smith into Scotland. And for that we shall call some witnesses which indeed we did not produce before at any trial, because we had not then discovered so much. We shall bring you the person at whose house he lay at Newcastle, and the very messenger that was sent with him to conduct him a by-way into Scotland. Call Sheriffe and Bell.

L. C. J. Look ye, gentlemen, You that are at the bar there, you must let the jury stand by themselves. I see there are a great many others intermingled with them, and you, gentlemen of the jury, if any whisperer talk to you, we expect that you should tell us who they are; for we will suffer no remarks to be made but what are openly made to the court, and the jury, by the counsel of both sides.

Att. Gen. Swear Sheriffe and Bell. [Which was done.

Mr. *Williams.* What is this man's name, Mr. Attorney? Friend, What is your name?

Witness. My name is Sheriffe.

Att. Gen. Pray give my lord and the jury an account what you know of any person that lay at your house some time since, and whether you have seen him since? My lord, this gentleman did not know Aaron Smith before, and therefore I desire Mr. Atterbury may be called and examined again.—Mr Atterbury, do you know Aaron Smith?

Atterbury. Yes, I know him very well.

Att. Gen. Had this gentleman a view of Aaron Smith?

Atterbury. Yes, he had. He was brought where Aaron Smith was, and this other person was by before him too, and I was by when they had a view of him.

Att. Gen. Now, pray give an account what you know of the man you saw.

Sol. Gen. Where is Aaron Smith?

Atterbury. He is in the King's-bench prison, and he was brought by Habeas Corpus to Whitehall before the king, where these two persons were brought likewise, and there this man, Sheriffe, did own that Aaron Smith was the man that was at his house; and the other Bell, owned that he travelled towards Scotland with him, and that he was hired to shew him the way into Scotland.

Att. Gen. Did Aaron Smith say any thing?

Atterbury. He would not answer any thing at all, nor say a word.

Att. Gen. Pray give an account, Mr. Sheriffe, who it was that lay at your house, and when it was, and what he said was his business, and by what name he went.

Sheriffe. Indeed his business I did not know; but he was at our house about the middle of February, it was thereabouts.

L. C. J. When was it? What February?

Sheriffe. The last February.

Att. Gen. You say he was at your house last February, pray tell the court where that is?

Sheriffe. At Newcastle.

Att. Gen. Do you keep any inn there?

Sheriffe. Yes.

Att. Gen. What sign?

Sheriffe. The sign of the Black Spread-Eagle.

Att. Gen. And what did he do there?

Sheriffe. He staid there one night and went away, and returned again in twelve days or thereabouts, and came to my house again.

Att. Gen. Whither did he go from you?

Sheriffe. He went southward as I suppose, I know no farther.

Att. Gen. But when he first came to your house, which way went he?

Sheriffe. He went northward towards Scotland, as he himself said, and desired to have one to shew him the way: and I sent for this man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he first came to your house about the middle of February was twelvemonth, whither was he bound then, northward or southward?

Sheriffe. He was going to Scotland, that is northward.

L. C. J. And you say, after he came back again, and lay another night at your house.

Sheriffe. Yes, ten or twelve days after he did.

L. C. J. And which way went he then?

Sheriffe. Then he came southwards towards London.

L. C. J. Did you take exact notice of the man?

Sheriffe. Yes, I saw him before his majesty and the council.

L. C. J. And upon your oath, that same man you saw there, was the same man that lodged at your house in February was twelvemonth?—*Sheriffe.* Yes, it is.

Att. Gen. What name did he go by at your house?

Sheriffe. He went under the name of Mr. Clerk, but what his surname was I cannot tell.

L. C. J. Had he a servant with him?

Sheriffe. He had a man with him that staid at our house during the time of his going northward.

Att. Gen. What did he call his name?

Sheriffe. William Langston.

Att. Gen. Did he desire you to furnish him with a guide?

Sheriffe. He told me his servant did not know the way, and his horse was a little lamish, and desired me to get a guide for him. For after he had dined at our house, it happened to be a rainy day, and he could not go farther that night, and therefore desired me to get him a man that knew that country, and I sent for this same man, and he hired him; and he went along with him next morning, my lord.

Att. Gen. Whither was he to go?

Sheriffe. Truly I did not know; but he told me he did not know the way into Scotland, and I directed him to a gentleman's house at Jadbrough in the way.

L. C. J. Is that the road to Scotland?

Sheriffe. Yes, the high road to our part in Scotland.

L. C. J. Did he tell you to what part or place of Scotland he was to go?

Sheriffe. He named the west of Scotland, I think he named Douglas, but I do not know what place he certainly designed for.

Att. Gen. Then where is Bell?

Bell. Here.

Att. Gen. Had you a view of this man they call Aaron Smith?

Bell. Yes, I had.

Att. Gen. Give an account, whether you saw him in the north, and when, and where?

Bell. This man, Mr. Sheriffe sent for me, I live at Newcastle, and there I keep hackney-horses to serve any gentlemen, or be a guide to them as there is occasion; and Mr. Sheriffe sent for me, and when I came, he told me the gentleman wanted a guide into Scotland. We immediately agreed, it was upon Thursday night before that we call Easter-eve.

L. C. J. When was it, say you?

Bell. It was the Thursday before Easter-even, so they call it with us, that is, Shrove-tuesday.

L. C. J. Ay, they call it so in those places, because it is the even of the fast of Ash-wednesday, the beginning of Lent.—Well, go on.

Bell. We went away on Friday the next morning on our journey towards Jadbrough, and the second day, which was Saturday, in the afternoon, my horse tired, whereupon he left me with my horse, and took the man's man of the house where he left me, to guide him, for my horse would not ride up with him, being tired, and he resolving to go on, and he bid me follow him on the Sunday morning to Jadbrough town, which I did, and we staid there all Sunday. And on Monday morning I saw him take horse, and another man that was his guide, and away they went, as I think, he said towards Douglas he was going. And he paid me, and I returned again from him to Newcastle, and left him.

L. C. J. Pray, how far was this? you say you went with him to Jadbrough, how far distant is that from Newcastle?

Bell. To Jadbrough, my lord?

L. C. J. Yes.

Bell. It is forty miles, my lord.

L. C. J. How near Scotland is it?

Bell. It is within some six miles of the English border.

L. C. J. Did you see him at any time after that?

Bell. I saw him at his coming back again; being at Sheriffe's house, his wife asked me, if I would go up and see the gentleman that I went with towards Scotland: so I went up, and he made me eat and drink at the table with him.

Att. Gen. What name did he go by?

Bell. He went by the name of Clerk.

Att. Gen. Was there any servant with him?

Bell. There was a man that came with him as a servant there, and was all that time at Newcastle, that he was gone towards Scotland, till he came back again.

L. C. J. Mr. Attorney, Did this man see Smith at the time the other saw him?

Bell. Yes, I did.

L. C. J. And is that the man that went by the name of Clerk at Newcastle, and that you went with towards Scotland?

Bell. Yes, it is.

Atterbury. And when they charged him with it, Aaron Smith did not deny it.

Att. Gen. Did you go any by-road to get into Scotland?

Bell. No, it is the road gentlemen usually go to Jadbrough, and so on; because it is something the nearer way to that part of Scotland, as we judge it to be, therefore gentlemen use it.

Att. Gen. Is it an high open road?

Bell. Yes, it is the high open way to that part of the country.

Att. Gen. My lord Howard, Pray, were the names of any of the Scotchmen mentioned at your meeting that were to be sent for?

Lord *Howard.* Yes; there was my lord Melvin, sir John Cockram, and one Campbell.

Att. Gen. Now, my lord, we will give you an account, that as Smith went into Scotland, so these persons soon after came into England.

Juryman. My lord, we desire that my lord Howard would name those Scotchmen that were to come.

Lord *Howard.* There was my lord Melvin, sir John Cockram, and one Campbell, one that was of my lord Argyle's name and family; and there was another name, but I cannot remember what that name was.

Att. Gen. We shall give you an account, my lord, that they came immediately after this to town; and at the breaking out of the plot they absconded.

L. C. J. Mr. Attorney, Has my lord Howard his pardon?

Att. Gen. Yes, my lord, he has

L. C. J. Then your lordship may be covered.

Lord *Howard.* I cannot tell but they may ask me some questions.

Att. Gen. Then you may be uncovered when they ask them, in the mean time your lordship may be covered. Swear sir Andrew Foster. (Which was done.) Pray, Sir, will you tell my lord and the jury what you know about the Campbells, and sir John Cockram's being in town. Or any other Scotchman that you know of.

Sir *A. Foster.* My lord, I did see those gentlemen in the beginning of last summer. Sir John Cockram, and Mr. Monroe and Campbell the son, I did see, but the father I did not, but I do know he was in town, though I saw him not.

Att. Gen. How do you know it?

Sir *A. Foster.* I had messages from them.

L. C. J. Sir Andrew, you say, you saw sir John Cockram and Monroe?

Sir *A. Foster.* Yes.

L. C. J. Did you see any body else?

Sir *A. Foster.* I saw sir George Campbell the son.

Att. Gen. What became of them upon the discovery of the plot?

Sir *A. Foster.* Sir John Cockram did abscond, and Mr. Monroe was taken into custody.

Att. Gen. What became of the others?

Sir *A. Foster.* The Campbells were both in custody.

Att. Gen. Did you see any commission they had?

Sir *A. Foster.* I did see a commission that sir John Cockram had

Att. Gen. What was it for?

Sir *A. Foster.* To make a purchase of some plantations beyond sea, I think it was Carolina.

L. C. J. Ay, where my lord Shaftesbury had an interest.

Sir *A. Foster.* It was some of the West Indies.

Lord *Howard.* I did omit that passage, my lord——

Att. Gen. Pray, was it discoursed then, what should be the blind for these gentlemen that were notorious dissenters, that they should come to town from Scotland about?

Lord *Howard.* It was to carry on a plantation in Carolina. The Scotch gentlemen were personally known to my lord Russell only; and my lord Russell was to write the letter to them, and, I suppose, did.

Att. Gen. Mr. Atterbury, What do you know of these Scotchmen coming to town: and what became of them afterwards?

Atterbury. My lord, about the beginning of July, 4th, 5th or 6th, or thereabouts, I had some information, That there were some Scotch gentlemen that had been shifting up and down, and at that time were about Black-Friars, lodged there secretly. I immediately went with the King's proclamation, and some warrants that I had to apprehend some traitors that were fled: and when I came, I found that Mr. Common Serjeant having notice of them, had beat up their quarters, and they were endeavouring to escape by water; but they were catched. There was sir Hugh Campbell, and Bayley and sir George Campbell, and some others, I know not the names of them all; truly I cannot tell whether Monroe was not another, but sir Hugh Campbell I had in my custody, and Bayley was immediately committed to the Gatehouse; and the rest of the gentlemen I afterwards took in a cunning hole by Moor-Fields, in a back house. And when I came there, I found them lying on the bed in the middle of the day; and had them prisoners in my custody two or three months; and then they were all sent out of my hands into Scotland, prisoners. Six of them there were, my lord, that I saw.

Att. Gen. We have done, my lord, only we desire that a word of record may be read.

Mr. *Williams.* What record is it, Sir?

Att. Gen. Of colonel Sidney's attainder.

Mr. *Williams.* My lord, we shall desire your judgment, whether that record ought to be read against Mr. Hampden; I perceive by Mr. Attorney, that is a record of the conviction of Mr. Sidney, which ought not to be given in evidence against Mr. Hampden upon this indictment.

Att. Gen. We make use of it to shew how upon former trials upon this evidence, verdicts have gone.

Mr. *Williams.* We are in your judgment, my lord, if by law it may be given in evidence against Mr. Hampden, who is neither party nor privy to it, nor indicted for the same offence.

Att. Gen. Let it alone then.

L. C. J. Well, Mr. Attorney does not press it. What say you to it, gentlemen, for the defendant?

Mr. *Williams.* May it please your lordship, and you gentlemen of the jury, I am of counsel for Mr. Hampden, the defendant, upon this indictment here before you. This indictment is a severe indictment: it is a very high crime of which my client is accused. How far the evidence tends to reach it, you have heard; and I shall, with the patience of the court, particularly observe it to you. But I shall first speak to the indictment itself: It says that Mr. Hampden, being a person of a turbulent disposition, and seditiously intending to disturb and disquiet the king's peace, and to stir sedition, and to bring the government into danger, did conspire, &c. As to this matter, gentlemen, there is no manner of proof of what the indictment charges, as to the disposition of the person accused; nor that he had any other design, than what my lord Howard hath now sworn. Then it says further, that Mr. Hampden did consult and conspire with divers persons to execute these purposes; and particularly for the making and raising an insurrection in the kingdom. This is laid as the particular fact; and for this purpose he did further conspire with several persons to provide arms and armed men: and for their fulfilling of this, he did further

consult with several persons, that some persons should be sent into Scotland to stir up the king's subjects in Scotland, to a concurrence and conjunction with some people in England, about this his evil design. How far this indictment is proved upon the defendant, gentlemen, is the question before you. He has pleaded not guilty, and hopes to satisfy you he is not. Gentlemen, as to what evidence has been given you so far as it is positive and affirmative, I mean the testimony of my lord Howard; in that part, it is impossible for us that are of counsel for the defendant directly to contradict him with proof, or to give a direct positive proof in answer to it; I say, it is impossible for us to contradict him, who gives such a positive evidence of fact. By the evidence of my lord Howard he tells us, there were six persons in this council, as he is pleased to call them. By this evidence, three of the six are dead, my lord Russell, col. Sidney, and the earl of Essex; he himself is the fourth, the defendant the fifth, who cannot give evidence for himself; and the duke of Monmouth, who is the sixth, being away, there is not any person in being, that should contradict my lord Howard's affirmative in this part of his evidence but the duke of Monmouth, whom we cannot have here, since by the evidence, Mr. Attorney General could not prevail to have him at this trial; therefore proof of that nature cannot be reasonably expected from my client to acquit himself by a positive contradiction of what my lord Howard has sworn. Then, in this case we must, as in all cases where a person does swear directly against a defendant, endeavour to satisfy and persuade your lordship and the jury, upon circumstances arising out of this fact, and further circumstances attending the fact, and by probable arguments and reasonable inductions out of the evidence, that this gentleman, the defendant, is not guilty of what he is charged with.

In the first place, we shall observe upon the testimony of my lord Howard, that as to some things he is very positive and particular: he has an incomparable memory, and speaks particularly to persons, particularly to places and particularly to times. But, gentlemen, as to that which is the principal part of his evidence, and which most affects the defendant, and wherein it concerns us to contradict or disprove him, he is wanting as to that circumstance of time. He that is so exact in his memory as to other circumstances, is not positive, nor any thing like positive, as to the times of the meeting. For they would imagine, that the first meeting the defendant was concerned in, was at his own house. He describes the house and the place very exactly, but as for the time, he only says it was about the middle of January: he carries other things in his memory positively; and whether it might not be expected in a case so remarkable as this, and which so nearly and highly concerned himself, that he should be as particular in the time, as he is in other things, you may rationally judge. His lordship sometimes is very particular as to time: he tells you in his relation about my lord Shaftesbury, that his going to him was on the Saturday after Michaelmas day; and then he pursues it to the second and third of October. He is positive to many several days; upon which I would observe, that he being particular to a day, as to other things, may well be expected to be ready (if it be true) to be as particular as to the time of this meeting: but therein he is to seek; he is doubtful as to that. And you must give us leave, gentlemen, to make this observation, that since he will not be particular to that time, we do apprehend that he gives himself a little loose; that we may not meet with him to contradict him in that circumstance: For if he should be positive therein, as he is in the other matters that concern not the defendant, we might perhaps by clear pregnant circumstances contradict, if not disprove his lordship, that it is not probable (if possible) it should be true what he affirms. But, gentlemen, we must answer it as well as we can; and since he is so cautious, we must meet him by arguments in another way. Another thing we should observe upon my lord's evidence, is this; that my lord, though he be particular as to many facts and things relating to my lord Shaftesbury, where he names other particular persons, I think col. Rumsey and Walcot, and names the particular discourses, particularly instancing in them, between him and my lord of Shaftesbury, between him and Walcot, and between him and other persons; yet he has not made use of any one circumstance of fact in this case of the defendant's now before you, that does justify what he hath said, save only that of Aaron Smith; not any one circumstance of fact. So that there is no more than the bare saying of what my lord Howard is pleased to deliver, no more than his oath, nay, no more than his observation and inference of much of what passed in the company of several persons, without any concurring circumstances in fact to justify or confirm his testimony. It might have been an easy matter, if all that my lord Howard says was true, that there was such a meeting at Mr. Hampden's house by such and such persons, to prove, that such persons or some of them, met there. But that there should be no person to prove, that these gentlemen, or any one of them, met there; nor any other fact or circumstance in the world, to go along with my lord Howard to justify his asseveration, is very wonderful, and may well make it doubtful that it should not be true: and the rather, gentlemen, (if it be true, as my lord Howard would have it) because there was a second meeting of all these persons at my lord Russell's, which was so public and open a place, and yet no man to concur or go along with my lord Howard in any one thing; no particular fact assigned to justify his testimony as to this meeting, is strange, if it be true.

So then, gentlemen, there is no more than what my lord Howard has sworn, without any

one circumstance to back it, to prove the defendant guilty. My lord, taking this upon the main of my lord Howard's evidence, it will be pretty hard too upon the nature of the fact, that he is pleased to prove against this gentleman, to make an answer to it: And truly, I think as hard for you to believe it. Gentlemen, he would imagine, that there should be men raised, men armed, a discourse of money, and this done as he would have it, about the middle of January; and yet nothing at all done, though there appears no manner of discovery of this very contrivance, till about July. Neither is there any thing done in order to the raising of men, the arming of men, or the levying of money all this while. So that there is no one fact of any kind whatsoever, that goes along with what my lord Howard has said.

My lord, and gentlemen, another thing we would desire to observe, is this, and here we shall begin with what we have to say, as to our own arguments and circumstances, that we have to take off from the testimony of my lord Howard in this case: In the first place, it appears by the evidence of my lord Howard, that he was very deep in a conspiracy against the government, and to make a disturbance in the kingdom, long before this that he now speaks of against the defendant, that is plain enough, for he tells you, that my lord of Shaftesbury and he, at Michaelmas, were contriving of projects to overturn the government, and raise a rebellion. It appears plainly by his evidence, that my lord Shaftesbury, when he left his house was resolved upon it, and my lord Howard was very solicitous to carry on the same design; nay, he was so active in it, that he tells you, that he did create messages between my lord of Shaftesbury and the duke of Monmouth, and would needs go by a false insinuation of his own, to draw in the duke of Monmouth, by telling his grace, his information he had from Walcot, and not saying he came from my lord Shaftesbury, with whom he says he had been discoursing; but he would put it under some sort of disguise, the better to prevail. So that it appears my lord was very criminal and guilty, in this case. Why then, gentlemen, my lord being so highly criminal, and there being a discovery of this conspiracy by Keeling and Rumsey, and West having made a more manifest discovery, and this happening in July: Then it was high time my lord Howard might conceive for him to secure himself, and save one, he being thus guilty, as he declares: It is but reasonable to conjecture, he then began to place his security in a pardon; and that there were no other means to save his life, and that the way to it must be by some farther discovery of a conspiracy against his majesty and the government; And having since obtained a pardon, it is agreeable, that whatsoever my lord Howard has done in this case, he has done for his own sake, to purchase his own pardon, for a treason he was so deep in; and to out-do all the witnesses that went before him, by fresh testimony against the defendant and others: This might incline him to go an inch or two, or more, beyond the discovery of Keeling, West, and Rumsey; to have but said the same thing that was proved by three or four witnesses before him, might not perhaps have availed him: May not the indifferent believe it in this case, to be the interest and security of my lord Howard, by these means to merit his pardon? May it not be believable, that what he hath said, he hath said only for his own sake, and that he has by exposing this gentleman, and the blood of others, procured himself a pardon?

L. C. J. What do you mean by that, Mr. Williams?

Mr. *Williams.* By being a witness against the defendant and others, he has procured his own pardon.

L. C. J. That is a little harsh expression—

Mr. *Williams.* My lord, I explain myself thus——

L. C. J. It is an harsh word and too roundly expressed; you had need to explain yourself; it is a little too rank, as though the King's pardon were to be procured by blood.

Mr. *Williams.* My lord, I intend nothing of hardship or amiss, but to speak according to my instructions, and to make the best observations I can, out of the evidence of my client: I will express myself as well as I can, that my lord Howard being a witness against men in a case of this high nature; and there being other witnesses before, and besides himself to the discovery of the late conspiracy against the government, it concerned him to give an home evidence in the case, or else he could not have any expectation of his pardon: For if he had done no more than what others had done before him, when there were three witnesses besides, and they had got the start in the discovery, his discovery had been in vain; and therefore he was concerned perhaps to strain, that he might make such a discovery as might answer his end; and this will arise naturally, I suppose, out of what has happened in this case: For it seems, though it was something long before he got his pardon, now he has it. My lord, another thing is this, How far my lord Howard will be credited in this matter; we shall leave his credit to you, gentlemen upon what we shall prove. For we shall make it out by persons of great honour, and persons of great integrity, that upon discourse concerning this conspiracy, my lord Howard did declare, that he knew of no persons that were guilty of having any hand in it; he declared it upon his honour, he declared it upon his religion, and he used all the asseverations that were possible for a man to offer to make himself believed.

My lord, it may be objected, as it has been sometimes, that that was to out-face the conspiracy, and so stop the prosecution of what he knew himself to be guilty of: But however, thus far we may make use of it for the defendant, that if my lord Howard would in the face of Heaven, pawn his honour, his trust,

his conscience, and his religion, to assert that which was not true, and under all those vows and engagements affirm an untruth; a man that would deal so, and speak an untruth with that solemnity, I think, is not a person of the same credit, as a person of certain known truth and veracity. For if a man will say one thing one time, and that with solemn vows and asseverations, and swear another thing quite the contrary another time, he does not stand so fair for credit, I think, as he that always maintains, and avows the truth. So far we may make use of it very safely, I think, as to my lord's credit.

My lord, another matter that we have to urge, is, that since the trial of my lord Russell and since the trial of colonel Sidney, my lord Howard has in discourse owned, that my lord Russell died innocent. If that be true, it will have a great weight sure with you, gentlemen, to discredit my lord's testimony. For then he hath contradicted what he hath sworn. For if my lord swore, that my lord Russell was guilty, as all the world knows he did, and afterwards soberly, and publicly shall have said he died innocent, he has contradicted his own evidence, and his own oath, and sure is not to be believed as to what he swears now against the defendant. My lord, it did not rest there; but since the trial of colonel Sidney, it will be proved by witnesses that my lord Howard did declare that colonel Sidney had hard measure. This will be proved by witnesses; and it is rather to be presumed, he meant hard measure as to his own testimony, which he was best knowing of, than of any thing else as to his trial. Now, how this person of great honour can solve this, and how it can stand with his oath, and his honour; I will leave it to you, gentlemen, to judge of it. My lord, I have another matter to say, that with me seems to have very great weight. My lord Howard, upon some occasions has said, being in discourse with a very great intimate of his, and the man being speaking of the world to come, speaking of eternity, speaking of the immortality of the soul, speaking of the rewards and punishments of another life; my lord Howard should say to him, 'How long wilt thou persist in this fool? How long wilt thou be so foolishly prevailed upon, as to believe the world was ever made, or will ever have an end?' My lord, if a person be of that opinion, (and a man's judgment in such things will discover itself in his words) how far the testimony of a man of that persuasion shall influence a jury when he stands single, when there is no fact to justify him, in point of probable circumstance, will be easily observable, and I must leave it to the gentlemen of the jury to consider.

My lord, we have another saying of my lord Howard's, which we shall give you an account of in the proofs, and that was in relation to his pardon. Being free in discourse, as my lord is a man very liberal that way, and his friend enquiring whether he had his pardon. 'No,' says he, 'nor I cannot have it till the drudgery of swearing be over.' Truly, it is a very odd thing, that a man should call that drudgery, that is his duty. To testify the the truth, is as much the duty of every honest man, as any thing else. Men have died for the truth, and we look upon those as martyrs, and the best of martyrs that die for the truth. Now, that this noble lord, or that any man should call this a drudgery, which is so manifest a duty, by giving a true testimony to preserve the king's life, and support the government against the contrivance and conspiracies of evil men, is but an odd insinuation, and truly I think it ought not to be taken in this sense, as to my lord, that he did strain a little to make his discovery the more profitable to him, and so did say more (so far I may safely go) than any one else did say. And, my lord, this is that that I would observe upon the first part of the evidence.

As for that part that concerns Aaron Smith, the evidence given by Sheriff and Bell, I submit that to your lordship, how far that can any way affect Mr. Hampden the defendant. It is introduced to fortify the testimony of my lord Howard, and it is introduced by himself thus: That at their meeting at Mr. Hampden's house, there was a discourse of some assistance to be had from Scotland; but says he, at the second meeting at my lord Russell's, then it came to a further discourse, and colonel Sidney did undertake to name a person to send thither; and a person was named; he does not say Mr. Hampden was concerned in it, or that Mr. Hampden named the man, or any thing particular as to Mr. Hampden, more than that he was in the company. Mr. Hampden had no hand in the undertaking, or sending him into Scotland; that was altogether the part of Mr. Sidney, save this, that he says my lord Russell writ the letter that was to go by him. It does not appear Mr. Hampden was at all concerned in it, but only was there.

L. C. J. And consented to it.

Mr. *Williams.* I would not strain any thing, my lord, further than the evidence is.

L. C. J. Nor do not misrepeat it neither.

Mr. *Williams.* I design not any such thing, my lord.

L. C. J. But you do though; for he swears it, every one of them consented.

Mr. *Williams.* By silence it must be then. For he does not say, that he said any thing. He swears only colonel Sidney undertook to manage it, to send a person; and my lord Russell to write the letter.

L. C. J. And all the rest consented to it.

Mr. *Williams.* What is meant by consent, when nothing was said, I must leave to the jury. I must agree, the lord Howard did swear, that my client was in their company, but how far he did, or did not consent, does not at all appear, and how far this will charge my client, I must leave to you, gentlemen. But the proof, as to this matter, stands thus; that Aaron Smith was at Newcastle, in February

last, that he went publicly. Now, my lord Howard says, that he went to agitate a confederacy between the malecontents of Scotland, and those in England. Now it is strange, that a man that was to agitate such a concern, should go publicly with a servant to Newcastle; so publicly as to be known again; and of his own accord tell them he was going to such a place in Scotland. And be it so in fact, will any man apply this to any thing was done before? (as my lord Howard says about a consultation to join in rebellion.) Will any man think, that he should talk at that kind of rate, if that were his employment, and tell whither he were going? But I rely upon this, in point of evidence. It is not proved yet, that Aaron Smith was in Scotland. That he came within six miles of the borders of Scotland, is proved; but it is not proved he was in Scotland, or did agitate any conspiracy there; or did any thing more than go within six miles of the borders of Scotland. But then they would press it further, and they say, that there were some Scotch gentlemen, that in the summer came here into England, and that they hid themselves when the plot was discovered. It does not appear my client had any conversation with these Scotch gentlemen, or any of them, or was ever in their company. It is a very remote inference to bring any thing of this to affect my client in this high charge.

My lord, we shall add one thing more to disprove that part of the Indictment, that lays the imputation of turbulency and sedition to the charge of Mr. Hampden; and which also will shew the improbability of his being concerned in any thing of this nature. We shall prove him to be a person of a sober conversation, of a retired life, and studious disposition; and as an evidence for the defendant, we shall prove, that he in October 1680, left England for his health's sake, and went into France for the recovery of his health. He continued there till about Michaelmas was twelve-month, then he returned. It is true, he continued in England, from Michaelmas to the time they speak of; but we shall make it plain, that in February, my client, and my lord Montague had adjusted matters between themselves, to go the beginning of summer again into France, there to continue and abide some time for their healths. Here is a strange kind of imagination, that this contrivance between my lord Howard and my lord Shaftesbury, that was going on before this time, and that was disappointed, and my lord Shaftesbury went away, and afterwards died in Holland, was taken up by my client, and those other persons, when my client, as we shall prove, never intended to stay in England. My lord, he was a parliament man in both the last parliaments, but appeared in neither of them, being all the while in France for the recovery of his health. We shall prove him to be one studiously inclined, that he lived a retired life, and kept very little or no company; and you will hear from persons of very great honour and quality, that he is, as to his person, and as to his opinion; and then we shall submit it to you, gentlemen of the jury, whether you can believe him guilty of this he is charged with, which is your issue. You are to try, whether he be Guilty, or Not Guilty, of the crime charged in the Indictment.

Mr. *Wallop.* My lord, and gentlemen of the jury, I desire to make one observation before we call our witnesses.

L. C. J. Pray do not take up our time altogether in speeches, but go on to your evidence.

Mr. *Wallop.* I desire to observe but one thing, my lord.

L. C. J. Make your observations at last, but spend not our time in speeches. I know you will expect to be heard at last, and so you shall, whatever you will say.

Mr. *Williams.* Call the earl of Anglesey, the lord of Clare, and lord Paget, Mr. Ducas. [Who appearing was sworn.] Now we have him here we must begin with him, my lord. Mr. Ducas, pray what did you hear my lord Howard say at any time concerning this conspiracy, and who were concerned in it, and who were not?

Mr. *Ducas.* My lord Howard came once to the house of colonel Sidney, I believe it was about eight days after the imprisonment of colonel Sidney; and when he was in the house, I asked him, What is the matter, my lord? He did answer me, he was told there was a plot against the king and the duke, and one general insurrection to be made, and that colonel Sidney sent a man into Scotland, to which thing my lord Howard sware, laying his hand on his breast, saying, 'God knows all things, and 'God knows I know nothing of that; and I am 'sure if colonel Sidney had known any thing, 'he would tell me,' and I said, what is the matter, my lord? Are you afraid? And he made answer to me, 'No honest man is safe in 'his own house, I pray you lend me a bed to 'lie in.' And he asked me about the goods of colonel Sidney, because of the plot and such things, and he desired to have them removed to his house; and he said, rather than go to the Tower he would do any thing.

Mr. *Williams.* Speak again to the jury that did not hear you, what said my lord Howard to you?

Ducas. He said, rather than to be a prisoner again he would do any thing

Mr. *Williams.* Who to be a prisoner again?

Ducas. My lord Howard.

Att. Gen. What things were spoken of?

Ducas. He said he would do any thing.

Mr. *Williams.* Were you speaking of the conspiracy? Of the plot?

Ducas. He spake of the plot, and said he knew nothing of it.

Mr. *Williams.* What did he say, Sir?

Ducas. He said to me and swore, he knew nothing of it, and called God to witness.

Mr. *Williams.* Pray, did he then say he would do any thing rather than go to the Tower, when you were talking of the plot and conspiracy?

Ducas Yes, he would do any thing rather than be a prisoner again

Att Gen Pray, what did he say?

Ducas He raised up his hands on high, and said he knew nothing of the plot, or of the insurrection, or that colonel Sidney had sent any man into Scotland

Mr *Williams* When was this?

Ducas I believe it was 8 or 9 days after the imprisonment of colonel Sidney

Att Gen What day of the month, and what month was it?

Ducas He was imprisoned about the end of June

Lord *Howard* My lord, it would be necessary that I should make an answer to this; and I know not whether I should make a particular answer to every one, for here is a whole set of witnesses, I see

L C J No, let them alone You must not interrupt them, they must go on with their evidence; and when it is a fit time for you to answer them, the counsel for the king will call you

Mr *Williams* Pray swear Mr Howard [Which was done] Pray, Sir, will you please to acquaint my lord and the jury what you know of what my lord Howard has said of the plot, and who were concerned in it?

Mr *Howard* My lord, what I have said is in the paper of Mr Sidney's trial, and truly I can say no more than what I said there

Mr. *Williams* Pray speak out, Sir, and tell it again to this jury

Mr *Howard* I was told I spake it very loud then

L C J Pray, Sir, speak as you please, we don't direct you in what key you shall speak, speak in what key you will

Mr *Howard* Then if you will have me speak it, I will speak it as loud again My lord, is Mr. Hampden here?

L C J Yes, there he is

Mr *Howard*. In the first place I do not know Mr. Hampden, my lord, I cannot promise to speak the very words that I spake the last time I cannot make them so fit as one tally fits another.

Att Gen Consider, Sir, you were not sworn then, you are sworn now, that is the difference, and therefore pray consider of it

Mr *Howard* My lord, as near as I can, I will repeat the same words again, I had little acquaintance with my lord Howard; but meeting him often at my brother's house (and being he was extraordinary pleasant company, I must needs say that he was so, and a man of great wit) and I coming from Whitehall, he asked me what news of the plot? I told him there were some people that were in the proclamation, or would be, and I named their names. Says he, I know none of them except Rumbold, I think; and by chance I met him passing through the Old Exchange, and he saluted me very kindly After this my lord Russell was taken, and when my lord Howard heard that, says he, then we are all undone. And I very much fear it is a sham plot, since they have seized upon my lord, and I doubt he is a lost man. After that, I think, as near as I can remember—The next thing was this, If you look upon the book, you will see what I said there.

L. C. J. We are not to look upon the book, man You must give your evidence yourself. Mr. Howard, I hope you do not swear by book? Let the truth come out in God's name, whatever it be

Mr *Williams* Ay, my lord, we desire to have truth come out

L C J Ay, whether it be of the one side, or the other, God forbid but truth should be spoken Mr. Howard, go on.

Mr *Howard* Then, my lord, colonel Sidney was taken, and, says my lord, I am extremely troubled for colonel Sidney, for he is my very good friend, said I why are not you concerned for my lord Russell? He is of your blood, says he, he is a man without exceptions. There is no man of such honour as he, but I am concerned for colonel Sidney, as that particular man that has obliged me above all the world, but I never heard my lord Howard name Mr Hampden in all the plot

Lord *Howard* I'll give you a reason for it, my lord, if you please, why I said so

L C J My lord, this is evidence for the defendant If the king's counsel will call you afterwards to make answer to any of these things, then is your time to speak We will not let them interrupt you when you come to speak, nor must you interrupt them now We are bound to hear both sides, and so by the grace of God we will do

Lord *Howard* My lord, I desire both he and his brother may stay in court, for I have something to say to them

Mr *Williams* Pray, what did you hear my lord Howard say concerning the plot?

Mr *Howard* He did declare positively, and said, they acted nothing but what was legal, and he said it 100 times over

L C J Did he declare that?

Mr *Howard* Yes, he did

L C J But when he said they acted nothing but legally, what did he mean? Was this plot legal?

Mr *Howard* I had former discourses with my lord Howard at other times, and I asked him, my lord, what tends all this to? Your going up into the city and making these meetings? Says he, we intended nothing but what is legal. There is not one man in the company, that I know of, intends any thing else

Mr *Williams*. What was my lord's opinion of the plot in June or July, or August?

Mr *Howard* He said he knew nothing of it, nor could he believe there was any such thing. When those persons were named that were to kill the king, 'Lord bless me,' said he, 'can 'there be such a thing in nature? That any 'men should be so wicked But that there is 'one man of honour or estate, or conscience, 'that ever had any such thought, it can never 'enter into my head, I can never believe it'

Mr. *Williams.* When was this?

Mr. *Howard.* When Rumbold and those other people were put into the proclamation.

Att. Gen. Mr. Howard, Then I will ask you your opinion, whether in your judgment, every man that was in the plot could not have said so much?

Mr. *Howard.* I suppose every man in the plot would have defended himself as well as he could, but I cannot tell what way.

Mr. *Thompson.* Sir, did he barely affirm it, or with asseverations and imprecations?

Mr. *Howard.* My lord was not put upon his oath before me.

Att. Gen. Mr. Howard, don't you believe a great many that were concerned in this plot would deny it?

Mr. *Howard.* I am to give my opinion only for myself, not for other people.

L. C. J. Have you done with him?

Mr. *Williams.* Yes, my lord.

L. C. J. Then go over, Sir.

Mr. *Howard.* My lord, I am troubled with fumes, and cannot well endure a crowd, therefore I desire I may have leave to be gone.

L. C. J. You may go if you please.

Mr. *Williams.* Call Mr. Edward Howard. [But he did not appear.] Then swear my lord of Clare and my lord Paget. [Which was done.]

L. C. J. Well, what do you ask my lord of Clare?

Mr. *Williams.* My lord of Clare, will your lordship please to acquaint the court and the jury, what you heard my lord Howard say concerning the late conspiracy?

Earl of *Clare.* My lord, some indisposition I have had of late, together with the great rigour of the season, has confined me to my house these six weeks, so that I should not come here but upon this summons of a subpœna, which I thought I ought not to refuse. I suppose I need not repeat much of what was said at col. Sidney's trial.

L. C. J. My lord, you must give what evidence you have to give now.

Mr. *Williams.* My lord, the gentlemen of this jury have not heard it, therefore you must say it all over again to them.

Earl of *Clare.* Sometime after Mr. Sidney was taken, my lord Howard came to see me, and complaining of the times, said, That all things were very sad and dangerous, and if ever he was questioned again, he would not plead, but desire them only to count noses, for the quickest dispatch he thought was best: I replied, sure his lordship was in jest. He said, No, he was in earnest, for he was confident if he came to trial, they would have his life, let him appear never so innocent. I said, I hoped not so, it was only his lordship's fear, and because of that, I thought it might be presumed he would venture much, rather than be tried. And discoursing of the late primate of Armagh's prophecy; he said, for his part, he thought the persecution was already begun, and he did believe it would be very sharp, but withal, he hoped it would be but short; and then he began to wish himself beyond sea till the troubles were over; and in compliance with his lordship I did wish so too. But as to Sidney, he did with great asseverations very much assert his innocency. He said, he thought he was not guilty of any of the things laid to his charge; and spoke with large encomiums in his praise, as he had obligation to do, and seemed to bemoan his misfortunes; which I said I had then reason to believe he was real in, for I believe never any man was more engaged to another than he to colonel Sidney. I told him there was a discourse of some writings of Mr. Sidney's that were taken; he said he was confident they would make nothing of any writing of his; I told him, I supposed he meant, legally they could not do it. This was the most he said; as to Mr. Hampden, he mentioned nothing that I know of.

Mr. *Williams.* Did he seem to declare any opinion about the plot or conspiracy in general, that there was any such thing or not?

Earl of *Clare.* I do not remember it.

Att. Gen. My lord of Clare, did you never hear my lord Howard before this complain of the government, that it was amiss, and was to be rectified?

Earl of *Clare.* Yes, he often did complain. Every body knows my lord's way of discourse.

Lord *Howard.* Pray, will you ask him, if my lord of Clare used to fall out with me upon those discourses.

Earl of *Clare.* My lord was always good company.

Att. Gen. You mean *à propos*, my lord.

Earl of *Clare.* I understand what you mean by *à propos*, you are a learned man, I know.

Sol. Gen. My lord of Clare, if I apprehend your lordship aright, my lord Howard was discoursing of the primate of Armagh's prophecy, and said he thought the persecution was already begun, and would be sharp, though he hoped it would be short, and he wished himself beyond sea till the troubles were over, and your lordship wished yourself so too?

E. of *Clare.* No; I said in compliance with his lordship, since he wished himself beyond sea till the troubles were over, I wished he were there too.

L. C. J. But I perceive all these discourses concerning the government are reckoned but jests and matter of laughter, but it is a very rank way of jesting, I assure you.

Mr. *Williams.* My lord, we call our witnesses seriously, they are the king's counsel that jest.

Att. Gen. Was this before my lord Howard was taken?

E. of *Clare.* Yes, but after Mr. Sidney was taken.

L. C. J. Well, who do you call next?

Mr. *Williams.* My lord Paget, Pray what have you heard my lord Howard say concerning the plot, and when?

Lord *Paget.* My lord sits there, and I believe he may remember it was about the 7th

of July, the Saturday before my lord went into the country, to the best of my memory, which was, I take it, the 9th of July: upon Saturday the 7th at night my lord came to see me; I told him I was glad to see him abroad, and not concerned in the disorders that were then so general; my lord told me he had been wished joy by several, and he took it ill, because it looked as if he were guilty. It is true, my lord was a man of great finesse and readiness in discourse, and came easily into all company; my lord said that was true, but he had so carefully behaved himself, but he was sure they could not touch him with any thing, nor did he know any thing of any body else that he could charge them withal.

Mr. *Williams.* When was this, my lord?

Lord *Paget.* This was the 7th of July.

Att. Gen. Pray, good my lord, Why did you joy my lord Howard? Had you any reason to mistrust my lord?

Lord *Paget.* No other reason than because I knew he was a man of great freedom in discourse, and might be concerned upon that account.

Att. Gen. And he would frequently discourse against the government I suppose?

Lord *Paget.* No, I never heard my lord discourse against the government in my life.

Mr. *Williams.* Swear Dr. Burnet. [Which was done.] Pray will you, Doctor, acquaint the Court, what you have heard my lord Howard say concerning the late Plot, and when?

Dr. *Burnet.* My lord Howard came to see me the day after the discourse of the plot broke out; Thursday I think it was, on Wednesday it began to be talked of. The thing was little understood then, but in general a plot was discovered, and my lord, with a great many protestations, lifting up his hands and eyes to Heaven, protested he knew of none, and believed there was none, and spake of the whole thing as a contrivance.

Mr. *Williams.* This was the day after the discovery broke out?

Dr. *Burnet.* Yes, the day after that I first heard of it.

Mr. *Williams.* Had you any other discourse with my lord about it?

Dr. *Burnet.* I had not seen my lord before of some months. And then he spake a great deal to me. He told me he had been in Essex, and after that he went to the Bath, and went so early and came away before the company came, because he would avoid all danger. And he expressed great apprehensions of fear of sham plots, and spake of false witnesses and former designs of that nature. The truth of it was, one had possessed me with a belief of the thing, it being then but a secret, but he strove to dispossess me of that belief, and his whole discourse ran upon that for an whole hour, and expressed, as I said, great fear of some sham-contrivance, and spake much of false witnesses, wishing that he were beyond sea.

L. C. J. What, he spake as if there were like to be great heats and stirs, I suppose?

Dr. *Burnet.* No, the talk was about the discovery, which he said he believed was a contrivance.

Mr. *Williams.* Did my lord Howard use to come to you sometimes?

Dr. *Burnet.* Yes, he used to come frequently to see me.

Att. Gen. Dr. Burnet, Pray let me ask you one question; you speak of solemn declarations and protestations made by my lord Howard, what gave the occasion to such a solemnity?

Dr. *Burnet.* I will tell you the occasion truly, though it was never asked me before. It was thus: I being possessed with the belief of the thing by one that assured me it was true, and would soon appear to be so, I argued upon that belief to convince my lord Howard, that it was true; and he argued a great deal to dispossess me of that belief. And I said, If there be any such thing, I pray God forgive them that are concerned, but certainly it is one of the monstrousest ill things that ever was done; for hereby they have done all that could be done to ruin the Protestant religion. He was smoking a pipe of tobacco, and he laid down his pipe, and lifted up his hands and eyes to Heaven, and protested to me, he neither knew of any such thing, nor believed it, but it was all a contrivance.

Att. Gen. By his discourse, you possibly might understand what he meant; did he mean being privy to the murder of the king, or the raising of rebellion?

Dr. *Burnet.* There was not a word then of the assassination, but it was all of the plot in general.

Sol. Gen. Did he make no distinction?

Dr. *Burnet.* We talked of nothing but plot in general. For the particulars were not then known. It was only about the general notion of a plot.

Att. Gen. Pray, what was the reason you had to believe it?

Dr. *Burnet.* There was a gentleman from Whitehall that came to see me, and he did assure me it was true, as being one that had it from a privy counsellor. This was on the Wednesday, when the council sat long about it; and nothing of particulars was then let out, but only a discourse in general of such a thing, and he said it would be found to be a certain truth.

Att. Gen. But, Doctor, did not you a little wonder at the carriage of my lord Howard? That a man that was not accused, that you heard of, should make such solemn protestations?

Dr. *Burnet.* My lord, he said just in this manner as I have told you, when I said, 'Pray 'God forgive them, if any have been con'cerned in such a thing;' he laid down his pipe, and lift up his hands and eyes. Whether he thought I suspected him, or no, I cannot tell, he best knows his own thoughts.

Att. Gen. Did he say a word of Mr. Hampden?

Dr. *Burnet.* No, there was not any particular person named.

Mr. *Recorder.* Doctor, he would not make you his confessor.

Dr. *Burnet.* His whole hour's discourse was to dispossess me of the opinion and belief I had entertained of the plot.

Just. *Holloway.* This was about July, you say?

Dr. *Burnet.* I cannot remember the very day of the month, I believe it was the latter end of June, but I am sure it was before any body was committed, that we heard of.

Mr. *Recorder.* Dr. Burnet, you say you did believe there was a plot then?

Dr. *Burnet.* Yes, I did so, and he laboured to dispossess me of that belief.

Mr. *Recorder.* Pray do you believe it now?

Mr. *Williams.* What a question is that, Mr. Serjeant?

Dr. *Burnet.* I make no doubt of it, Sir, as to the assassination.

Att. Gen. My lord Newport, Why do you lift up your hands? You do not do well; for it is a very proper question.

L. C. J. Well, call your next witness, gentlemen.

Mr. *Thompson.* Swear Mr. Gisborne. [Which was done.]

Mr. *Williams.* Pray, Sir, will you acquaint the Court and the jury, what you have heard my lord Howard say about the late conspiracy?

Mr. *Gisborne.* My lord only said he knew nothing of the plot; that is all I can say.

Mr. *Williams.* When was this?

Mr. *Gisborne.* The Saturday before he was taken into custody; then it was that your honour did say so, my lord.

Att. Gen. Ay, and 100 more, I believe, would say so, that might be concerned in it for all that.

Mr. *Williams.* Swear Mr. Blake. [Which was done.] Pray acquaint my lord and the jury, what discourse you had with my lord Howard about his pardon, and what he said to you?

Mr. *Blake.* My lord, about the month of October last, my lord Howard sent to me to know how I did, and desired me to come and make him a visit. The next day I went and waited upon my lord at his lodgings, at Whitehall, and after the compliments passed, my lord began a discourse of the plot, and I told him, That I heard none of the witnesses had their pardons, but only Keeling, the first discoverer. My lord told me no, but he had a warrant for his pardon, and with that he plucked it out and shewed it me, and I read it. And then I told him I thought it was of no avail, without he had his pardon actually under his seal; he said no, but he had their word and honour: but, said he, when I first received the warrant, they said I should not meddle in it till I heard from them again, which I have not yet; and I ascribe it to no other reason but only this, That I must not have it till the drudgery of swearing is over.

Mr. *Williams.* When was this?

Blake. In October last some time. So I then took my leave of my lord, and my lord desired me to come and see him at night, about six o'clock in the evening, for he had a great many come to him, but then he should be at leisure, and had many things to say to me.

Att. Gen. At that time did my lord express himself as discontented, and that it was irksome to him to be brought as a witness?

Blake. He only said those words that I have told you, and looked up and turned up his eyes towards Heaven when he said so.

Mr. *Williams.* Pray, where is Mr. Benjamin Mercer? Swear him. [Who was sworn.]

L. C. J. What do you ask him?

Mr. *Williams.* We bring him to prove that my lord Anglesey was served with a subpœna, but is so ill of the gout he cannot come.

L. C. J. If that be all, there is no question of it, but that he was subpœnaed.

Mr. *Williams.* If your lordship please, we will prove in what condition my lord Anglesey is, and then we hope your lordship will give us leave to prove what my lord has said concerning my lord Howard's discourses with him.

L. C. J. No, certainly, Mr. Williams, and I am sure you ask it not as expecting it should be granted.

Mr. *Williams.* I lay it before your lordship and the court.

L. C. J. Ay, you lay it before us, but you are a lawyer, do you yourself think fit it should be done?

Mr. *Williams.* My lord, I must submit it to you.

L. C. J. Come, will you consent that what the duke of Monmouth has said, shall be given in evidence, and then I presume the king's counsel will consent to your request?

Mr. *Williams.* I consent? Here is my client, my lord, in court, I can consent to nothing.

L. C. J. But if so be there be leave given on one side to tell what another person has said, why should it not be consented to on the other side, that it be proved what a third person that is absent has said for them?

Recorder. Ay, Will you consent that we prove what the duke of Monmouth has said?

Mr. *Williams.* We don't know what the duke of Monmouth has said.

L. C. J. But you do know it is not evidence, nor fit to be granted what you ask.

Mr. *Jones.* You know that it is not for your purpose what he has said.

Mr. *Williams.* My lord, We must go according to our instructions.

L. C. J. But you know the law, why should you offer any such thing? Your offering it will make the 'lay gens,' that know not the law, think that the court puts hardships upon people, in denying things which you that understand the law know can't be granted.

Mr. *Williams.* I do not press it, my lord, but leave it with you.

L. C. J. Why do you spend our time in urging things that are nothing to the purpose, and cannot be allowed?

Mr. *Williams.* Now, my lord, We will go on to another part of our defence, and that is, to call witnesses to the reputation of Mr. Hampden, and his behaviour, to satisfy you, that he cannot be such a person as the indictment says, and as he must be if it be true what this gentleman, my lord Howard, has sworn.

Mr. *Thompson.* We will first examine my lord Paget. [Who stood up.]

Mr. *Williams.* My lord, We ask you to that question. Have you known this gentleman Mr. Hampden, and what sort of a man is he?

Lord *Paget.* I have good reason to know him. I have known him a great while, and have always believed him an honest and a prudent man, a man of honour, and virtue, and integrity, my lord; and have had no reason to have other opinion of him. I know he has been always, ever since he came abroad into the world, a man that hath loved his study, and books, and a contemplative life. And therefore I should not be apt to believe, that he could apply himself to a thing so contrary to his own nature, and to that way that he delighted in, and had always hitherto applied himself unto, I mean to engage in a design of so much malice and wickedness.

Mr. *Williams.* My lord, You have had a long conversation with the knowledge of Mr. Hampden, you say. What say you as to his disposition; because this indictment says he is a person of a turbulent, factious, seditious spirit?

Lord *Paget.* I have always known him a quiet peaceable man, not meddling in business, very friendly, free from all turbulency, not of much acquaintance, nor desirous to make much.

Att. Gen. Pray, my lord Paget, upon the same oath you have taken, have you not at any time heard him express dissatisfaction as to the mal-administration of the government?

Lord *Paget.* No, never to me in the least.

Att. Gen. Not at the time of the last Westminster parliament?

Lord *Paget.* No, I never heard him then, nor at any time else.

Mr. *Williams.* Mr. Hampden was then in France, and not in that parliament, though he was a member. Where is Mr. Pelham?

L. C. J. Here he is. He sits down here. [Pointing to the table.] What would you ask him? [He was sworn.]

Mr. *Williams.* Sir, will you please to acquaint the court what acquaintance you have had with Mr. Hampden, and how long? And what you know of him?

L. C. J. You hear the question, Sir, how long have you been acquainted with Mr. Hampden?

Mr. *Pelham.* I have been acquainted with Mr. Hampden about five or six years living near him, and all that I could observe from him was, that he was a man much addicted to his studies, kept much at home, and I never observed that he had much acquaintance; but as to the business before you, I know nothing of it, nor never heard him speak any thing relating to it.

Mr. *Williams.* As to his spirit and disposition, is he a turbulent man?

Mr. *Pelham.* No, I never found him any thing like it. We never talked together of matters of that nature.

Att. Gen. Were you ever in his company at any time when he discoursed about government?

Mr. *Pelham.* No, I was never with him at any time when he discoursed of any such thing.

Mr. *Williams.* Sir Henry Hobart.

Att. Gen. My lord, we oppose his being a witness. He is one of his bail.

Mr. *Williams.* That was upon the Habeas Corpus act, not upon this indictment.

Att. Gen. If he be bail for the defendant, my lord, he cannot be a witness.

Mr. *Williams.* I appeal to the rule of the court, whether he was not bail upon the Habeas Corpus act only?

Att. Gen. Appeal where you will, the bail cannot be a witness.

Mr. *Williams.* We moved for an Habeas Corpus the beginning of last term upon the late act for Habeas Corpus's. And then at the last day of the term upon Habeas Corpus he was brought up thither, and was bailed upon that writ.

Att. Gen. Are not you one of the bail, sir Henry Hobart.

Sir *H. Hobart.* I was one of his bail, I think it was for his appearance.

L. C. J. If he be one of his bail that he shall appear in this court the first day of this term, and so from day to day, till he shall be discharged, and remains under that recognizance, then in any case against him he cannot be a witness for him.

Att. Gen. But they mistake the matter, he was then charged with this indictment: He then pleaded to it, and was bailed to answer the indictment; and surely in that case he can never be a witness.

L. C. J. That is certainly very true, and you know the law so well, Mr. Williams, that I wonder you will insist of it; in every ordinary case, it is every day's practice to deny the bail to be witnesses.

Att. Gen. Here is the person principal, will they render him in custody?

L. C. J. Ay, what say you, will you render him in custody? Then we will discharge the bail.

Mr. *Williams.* My lord, I will tell you what we will do.

L. C. J. Tell me what you will do! Answer my question, Will you render him in custody?

Mr. *Williams.* We will change the bail, my lord, and find some other sufficient person to

stand in sir Henry Hobart's place, rather than lose our witness.

L. C. J. With all my heart.

Mr. *Williams.* Here is Mr. Ashhurst, my lord, a gentleman of very good value.

L. C. J. But you must render him first, and change the whole bail. They must enter into new recognizances.

Mr. *Williams.* I cannot tell whether we can do that so very well, because the others, I am afraid, are not all here. He is a mighty material witness, I am sure.

Att. Gen. My lord, Mr. Williams says he is a material witness, let him be sworn, I am so fair, I'll consent to it: Let us hear what he can say. [Which was done.]

Mr. *Williams.* We thank you, Mr. Attorney. I am afraid you won't live long, you are so good natured.

L. C. J. But you are like to live for your good nature, Mr. Williams.

Mr. *Thompson.* Sir Henry Hobart, How long have you been acquainted with this gentleman, Mr. Hampden?

Sir *H. Hobart.* I have known him any time these ten years.

Mr. *Williams.* How has he been, Sir, as to his disposition and spirit? Did you ever find him to be of a turbulent temper?

Sir *H. Hobart.* Very far from it always.

Mr. *Williams.* Have you had any intimate conversation with him?

Sir *H. Hobart.* I have known him all along, I say, these 10 years, but of late I have had more converse with him some few years in travel.

Mr *Williams.* Had you much conversation, Sir?

Sir *H. Hobart.* I was with him continually at Paris, and abroad.

Mr. *Williams.* What say you as to his loyalty and principles? Was he a factious, seditious person?

Sir *H. Hobart.* Sir, he always expressed a great esteem for the government, and great respect and duty to the king.

Mr. *Williams.* Pray, Sir, when went Mr. Hampden abroad to go into France?

Sir *H. Hobart.* He went into France for his health about November, (1680,) I think it was.

Mr. *Williams.* How long did he continue abroad, sir Henry?

Sir *H. Hobart.* I found him in Paris the May after.

Mr. *Williams.* How long did you tarry there, Sir, yourself?

Sir *H. Hobart.* I went from Paris in June, and came back again to Paris about October or November, the same year, and I found him in France still.

Mr. *Williams.* And when do you take it he returned into England?

Sir *H. Hobart.* I was with him till he came over, which was about September, (1682,) I think.

Mr. *Thompson.* What do you know, Sir, of his intentions to go again beyond sea?

Sir *H. Hobart.* When Sir, do you mean?

Mr. *Thompson.* Since that time he came over, you say in September (1682.)

Sir *H. Hobart.* He told me of it often, I think it was about March, more particularly once at his own house.

Mr. *Thompson.* What March, Sir?

Sir *H. Hobart.* March 1683.

Mr. *Thompson.* That is last March.

Sir *H. Hobart.* Yes, last March, he talked of it several times, particularly once I went about some business of my own, and then he discoursed a great deal of his going over with my lord Mountague that now is; for he told me his health was not yet established, for he came over out of an hot country in autumn, and had been all the winter in this colder country, and the air he found had impaired his health again. And it was not only what he told me, but I had a letter from a friend of mine in France, to whom I had sent to desire him to come over; but he writ me word, no; Mr. Hampden was coming over again, and he would not come back again yet.

Att. Gen. Did he tell you when he intended to go over, sir Henry?

Sir *H. Hobart.* As soon as Mr. Mountague, my lord Mountague that now is, could get ready, who was to carry his lady over with him.

Mr. *Williams.* Sir, do you know of any preparation made by Mr. Hampden for it?

Sir *H. Hobart.* He had resolved to take his lady with him, because Mr. Mountague's lady went, and so I believe did prepare accordingly.

Att. Gen. Did Mr. Mountague go over?

Sir *H. Hobart.* He did not go then, but since he is gone.

Att. Gen. Were you in France then at this time?

Sir *H. Hobart.* This was in England, at his own house.

Mr. *Williams.* Pray, Sir, what is his disposition?

Sir *H. Hobart.* He was always inclined to a studious life, and kept very little company.

Att. Gen. Was this in March, 1683?

Sir *H. Hobart.* Yes, he came over in September before. I always observed him to be of a retired temper.

Att. Gen. You say in 1680 he went into France, and 1682 he came over again?

Sir *H. Hobart.* Yes.

Att. Gen. Pray, sir Henry, since you conversed so much with him, have you heard him since the last parliament at Westminster, or at any time have you been by when he hath discoursed his opinion about government?

Sir *H. Hobart.* Truly, Sir, I do not take myself to be capable of discoursing with him about any such matters.

Att. Gen. Have you heard him at any time complain of the mal-administration of the government?

Sir *H. Hobart.* No, Sir.

Att. Gen. Have you never heard any such thing from him?

Sir H. Hobart. No, never.

Mr. Williams. Swear Dr. Lupee——My lord, we must desire an interpreter, for the doctor speaks French only.

L. C. J. Swear an interpreter.

Mr. Williams. Dr. Burnet, or if he be gone, call sir Henry Hobart again. We must beg the favour of you, sir Henry, to be an interpreter, you understand the French tongue very well.

Sir H. Hobart. I will do it with all my heart, Sir, as well as I can.

L. C. J. Swear him.

Then the Doctor was sworn, and the Oath repeated to him by Sir Henry Hobart in French.

Crier. You shall well and truly interpret between the court and the witness, and the witness and the court, according to the best of your skill and knowledge: So help you God.

Mr. Thompson. Sir Henry, will you please to repeat what questions we shall ask, and what answers he makes?

Sir H. Hobart. Yes, Sir, as well as I can, I will.

Mr. Williams. Pray, Sir, ask the doctor this question, If he be acquainted with Mr. Hampden?

Sir H. Hobart. Yes, he says very well. He lived near two years with him.

Mr. Thompson. How long is it since?

Sir H. Hobart. Four years since, he says.

Mr. Williams. Pray, in that time, what was his disposition?* was he a seditious and turbulent man? Or was he a studious retired man or what?

Sir H. Hobart. He says the two years he lived with Mr. Hampden, he kept him company in his studies, and all that time he found he had no other inclinations but for study and knowledge, and his inclinations were very virtuous. He always observed in his discourse a great submission and respect that he had for the laws of his nation, and his prince, and to that degree he was a faithful subject to the king; that once he told him, in discoursing with him of the late Popish plot, that he was ready to sacrifice his life and fortune for the king's service.

Mr. Thompson. Ask him what discourse he had with him of the plot since it brake out.

L. C. J. Will that be any evidence do you think, Mr. Thompson? Will Mr. Hampden's declaration be any evidence, he being a person accused? Do you think he would tell the doctor, or any body else that he was guilty, when he was like to be questioned? That would have been a wise business indeed. You say he was a very studious man, and a learned man, truly if he had done that, he had bestowed his time in learning to very good purpose.

Mr. Williams. My lord, That that we would ask him is this; This person, the doctor, being discoursing with Mr. Hampden upon the discovery of the late conspiracy, and of the dangerousness of the time, he would have advised Mr. Hampden to have gone; no, he said, he would not, for he was an innocent man, and would not stir.

L. C. J. Well, ask him what you will, but his declaration of his own innocence cannot be taken for evidence.

Sir H. Hobart. He says, since this plot was discovered, he was going one day to visit Mr. Hampden, and going through Long-Acre, he met a French minister, a Savoyard minister—But, my lord, he speaks so fast and goes on with so much at a time, that I cannot remember it all.

Mr. Williams. Well, what said that minister to him?

Sir H. Hobart. He says this minister asked him if Mr. Hampden was not concerned in the plot, and upon that he went and told him what the minister had said to him.—He says, he told Mr. Hampden, that the duke of Monmouth, and my lord Grey were hid—He says, upon that Mr. Hampden said to him, I will never fly, nor conceal myself, for my conscience reproaches me in nothing.

L. C. J. Ask him why does he think the French minister, the Savoyard, as he calls him should ask whether Mr. Hampden were in the plot?

Sir H. Hobart. He says Mr. Hampden said he would rather die innocent than fly with the imputation of guilt upon him.

L. C. J. But ask him the question I put, why should that Savoyard parson say so? What reason had he to think Mr. Hampden was in the plot?

Sir H. Hobart. He says the minister did ask him, but he cannot tell what reason he had to think so.

Att. Gen. Pray, sir Henry, ask him this question; how long ago it was since he left him?

Sir H. Hobart. Four years, he says.

Att. Gen. Where was it, in England or France?

Sir H. Hobart. Whilst he lived in Bloomsbury, he says.

Mr. Williams. Call Dr. Needham and Monsieur Justell. [Who appeared. And Monsieur Justell was sworn.] Pray, Sir H. Hobart, will you ask Monsieur Justell, who speaks French too, if he know any thing of Mr. Hampden's resolution to travel with Mr. Mountague into France?

Sir H. Hobart. He says, Yes. He did tell him he was going into France, and he offered to carry some books for him along with him.

Mr. Williams. What company was he to go in, and what time?

* As to this Examination, see in this Collection Mr. Erskine's observations in the Case of Hardy, A. D. 1794, previously to the third examination of Daniel Stuart; together with the arguments of the other counsel, and the opinion delivered by Lord Chief Justice Eyre, upon the admissibility of the proposed examination of Stuart.

Sir *H. Hobart.* He says, Sir, he cannot be exact to the month when Mr. Hampden spake of going over, but he says it was a great while before this plot came to be discovered.

Mr. *Williams.* Was it some months before?

Sir *H. Hobart.* It was a month before it was known, he says.

Mr. *Williams.* In what company was he to go?

Sir *H. Hobart.* He said he was to go with Mr. Mountague.

Mr. *Conyers.* Pray, Sir, will you ask him, was he employed to get any French servants to be with him?

Sir *H. Hobart.* Yes, he says.

L. C. J. Ay, but what was the question? For there is such a crowd of people before the counsel, that the Court cannot hear Mr. Conyers's question.

Mr. *Conyers.* My lord, I asked him whether he was employed to get any French servants to be with Mr. Hampden.

Sir *H. Hobart.* Yes, he says.

L. C. J. Well there is Dr. Needham, what do you ask him?

Then Doctor *Needham* was sworn.

Mr. *Williams.* We call Dr. Needham for this purpose, my lord, to prove that these gentlemen that are accused, Mr. Hampden, and my lord of Essex, and the others, had very little esteem, and mean opinion of my lord Howard. And how one, they so little esteemed, should be let into so great a secret, will be very strange to imagine. Dr. Needham, pray, what can you say of any of these gentlemen's opinions of my lord Howard? What opinion had my lord of Essex of him?

L. C. J. Is my lord of Essex now before us? What is that to this case, Mr. Williams? Let my lord of Essex have what opinion he would of him; how does that concern the defendant?

Mr. *Williams.* I tell you why I offer it, my lord———

L. C. J. But pray, offer what is evidence, and keep to the business before you.

Mr. *Williams.* 'Falsus in uno, falsus in omnibus.' If we can prove that what he hath said of my lord of Essex is false, he is not to be believed against the defendant.

Att. Gen. Ay, but upon the evidence of my lord Howard, all the rest were convicted.

Mr. *Williams.* I offer it only upon what is here to day before you, he says, my client, and my lord of Essex were confederate with him upon such a design. Now if my lord of Essex was not there, then he is false in that, and that he was not, we offer this as evidence.

L. C. J. But it is not a proper evidence in this case.

Mr. *Williams.* It is a sort of evidence—

L. C. J. Ay, it is a sort of evidence, but it is not to be allowed. If you will prove Mr. Hampden's opinion, you may, but you must not for him bring proof of what my lord of Essex, a third person, thought of my lord Howard.

Mr. *Williams.* I only offer it thus——

L. C. J. Offer what is evidence, man! You are a practiser, and know what is evidence, but you have offered two or three things to day, that I know you do at the same time know is not evidence, and I speak it that it may not be thought we deny you, or your client any thing that is according to the course of law. You that know the law, know it is so as we say. Mr. Attorney has gratified you in waving three or four things already, but nothing will satisfy, unless we break the course of other trials.

Mr. *Williams.* My lord, what I take not to be evidence I do not offer, and where the Court over-rules me, I have not insisted upon it.

L. C. J. No?

Mr. *Williams.* No, my lord.

L. C. J. But you would have insisted upon it, if Mr. Attorney would not have been so easy as to consent, and the Court would have let you. Pray keep to the business, and the methods of law; you know the law very well.

Mr. *Williams.* My lord, I humbly apprehend this may be evidence, and I lay it before you. My lord Howard has proved that my lord of Essex and five more, of which Mr. Hampden was one, met and consulted about such matters. We may, I hope, be admitted to prove, that my lord of Essex was not there; for if we can take off his positive proof, as to any one of the circumstances, we take off from the truth of the fact. If all the persons were not there; then my lord Howard is mistaken in that, and accordingly must not be believed in the rest; therefore, my lord, I press it no otherwise: he hath proved these six persons were there. I offer this as some evidence, That it is unlikely it should be so, because my lord of Essex had so little opinion of my lord Howard, that he would never consult with him about any matter.

L. C. J. Then certainly my lord Howard is to be believed, to all intents and purposes, for here is a record of the conviction of my lord Russell, and of colonel Sidney, and all upon the testimony of this gentleman, my lord Howard; and is not that more to support his credit, than a flying report of a third person's opinion of him. And yet after all we say, it is no evidence against Mr. Hampden, and has been waved by Mr. Attorney.

Mr. *Williams.* Then I will not press it, my lord.

Just. *Withens.* It is no evidence, certainly, Mr. Williams.

L. C. J. It seems my lord Essex had such an opinion of my lord Howard's evidence, that he thought fit to cut his own throat, rather than abide the trial.

Mr. *Williams.* Call Mr. Murray.

L. C. J. Suppose my lord of Essex had said, That he was out of the plot, and Mr. Hampden was in, would that have been good evidence against Mr. Hampden, do you think? Pray mind what is the business before you?

Mr. *Williams.* Swear Mr. Murray. [Which was done.]

L. C. J. Well, what do you ask this man?

Mr. *Williams*. My lord, we call him as to what I opened of my lord Howard's opinion of the world to come, and rewards and punishments there.

L. C. J. Mr. Williams, Pray take notice of this: private discourses that people cannot come to make answer unto, because they cannot imagine to have them objected, are a very odd sort of evidence.

Mr. *Williams*. Therefore I opened it warily and tenderly; my lord, the witness will tell you the story better than I.

L. C. J. I cannot tell what Mr. Williams has said, or I have said in heat of talk or vanity. God knows how often all of us have taken the great name of God in vain: or have said more than becomes us, and talked of things we should not do.

Att. Gen. My lord, how can my lord Howard be prepared to give any answer to this?

L. *Howard*. My lord, this presses hard upon my reputation, my lord. I profess before God I do not know this fellow, I never saw him in my life before as I know: but a company of impudent fellows take the liberty of saying what they please.

L. C. J. To rake into the whole course of a man's life is very hard.

L. *Howard*. I would fain have these fellows dare to say this any where else of me.

Mr. *Williams*. Well, my lord, we will wave it.

L. C. J. They do not think it a fit thing to press it.

L. *Howard*. But, my lord, it concerns me in my reputation; who is this rascal they bring here? God's life, who is he?

L. C. J. We must be tender of men's reputation, and not let every thing come as evidence when it is not fit to be evidence, to put slurs and scandals upon men that they cannot be prepared to wipe off. Is he convicted of any crime? If he is, you say something, shew the record of it.

Just. *Withins*. Mr. Williams. You know the case adjudged lately in this Court, a person was indicted of forgery, we would not let them give evidence of any other forgeries, but that for which he was indicted, because we would not suffer any raking into men's course of life, to pick up evidence that they cannot be prepared to answer to.

Mr. *Williams*. We have that respect for my lord's honour too, as not to press it, only we had it in our briefs, and we must go according to our instructions.

L. *Howard*. I desire to know who that rascal is? What is he? Where does he live? I will make him an example.

L. C. J. Pray compose yourself, my lord, there is nothing of this pressed.

L. *Howard*. To say I am an atheist, my lord? What can be a greater reflection?

L. C. J. He has not told us any such thing as yet. And we will take care that nothing shall be offered but what is fitting.

L. *Howard*. I vow to God, my lord, I do not know the man.

L. C. J. My lord, do you think that every thing that a man speaks at the bar for his client, and his fee, is therefore to be believed, because he said it? No, the jury are to take nothing here for evidence to guide them of what the counsel say, but what is approved. They are to judge 'secundum allegata et 'probata,' that is their duty.

L. *Howard*. Does that fellow look like a man of that figure, that I should say any thing, or have any conversation with him?

L. C. J. My lord, I don't know what he is. Go on, gentlemen.

Mr. *Williams*. My lord, we have done with our evidence. If Mr. Attorney will leave it here, we will.

Att. Gen. My lord, we won't mistrust the evidence, nor the court.

Mr. *Hampden*. My lord, I desire to speak a word myself, if you please.

L. C. J. Ay, in God's name. You, or your counsel, I will hear all you will say, and as long as you will speak, provided you speak within the bounds of decency.

Mr. *Williams*. My lord, I think it best to leave it to the court: We hope we make it clear that our client is innocent.

L. C. J. Would to God you were innocent, that is the worst wish I wish you, but we will either hear him or you speak, speak as long as you will.

Mr. *Wallop*. My lord, I desire to make but one observation.

L. C. J. Ay, in God's name make what observations you will, Mr. Wallop, I hindered you from making your observations at first, because I knew it would be desired after the evidence was over.

Att. Gen. Then, my lord, I expect to be heard too. If Mr. Hampden makes a speech, I will reply, or if his counsel do it, I expect the last word, for I will have neither the party, nor the counsel to speak after I have summed up the evidence for the king. Mr. Hampden and his counsel are all one.

Mr. *Wallop*. I have but one short observation to make.

L. C. J. Go on then, Mr. Wallop, and say what you will.

Mr. Just. *Withins*. I think it is very fit you should do it of both sides; it is a cause of great concernment.

Mr. *Williams*. My lord, we will leave it here, I think.

L. C. J. Take your own course, do not say we hinder you of saying what you will for your client.

Att. Gen. Let them do what they will.

L. C. J. I will sit still, make speeches every one of you as long as you will.

Mr. Just. *Walcot*. It is fit they should speak what they can for the advantage of their client.

Mr. *Williams*. My lord, we leave it to the court.

L. C. J. Gentlemen of the jury, the evi-

dence has been something long, and the counsel both for the king and for Mr. Hampden, against whom this indictment has already been found by the grand jury, having left it to the court to sum up all, I shall do it as well as I can. And the question before you, gentlemen, is, whether the defendant be guilty of the offence charged in the indictment or not guilty, and there having been so long an evidence on the one side, and on the other it will be fit for me according to the best of my remembrance to help your memories, by recollecting what has been said on both sides, which I shall do as near as I can, and if my brothers will please to supply any thing that hath escaped me, [illegible] prisoner will [illegible] has [illegible] spoken [illegible] for the party [illegible] have liberty to speak [illegible] question should be left before you [illegible] and according to the best of my [illegible] and memory, thus it stands.

The first thing, Gentlemen, [illegible] able to you is that there [illegible] has been already opened to you [illegible] preferred against Mr. Hampden [illegible] forth, that Mr. Hampden [illegible] and [illegible] according to the [illegible] indictment (which were words of common form in an indictment of this nature) of an evil disposition designing to disturb and distract the government, and that he, with several other persons did conspire to [illegible] troubles [illegible] people [illegible] in the government, and in order to [illegible] that there were [illegible] meetings between him and several other persons, and that there was a design to commit [illegible] some persons of another nation to [illegible] with them their design particularly some [illegible] the kingdom of Scotland. This [illegible] the indictment to which the [illegible] he did not guilty.

Gentlemen, the evidence for the king [illegible] been of this [illegible] they did at the beginning which yet [illegible] the way, is not any thing of evidence, but the king's counsel would make [illegible] to press on their side, as the defendant and those that are of counsel for Mr. Hampden, have made some little hints to press on their side that some witnesses the one and the others would have had here, were subpoenaed, but could not be here. It seems by the proof, here was a meeting as it was between six several persons, and they name them, the duke of Monmouth was one, the lord Howard another, the lord Russell a third, the earl of Essex a fourth, Algernon Sidney a fifth, and Mr. Hampden the sixth. As for my lord of Essex he is gone to his long home, my lord Russell and Mr. Sidney have received sentence, and been executed. So there remains three surviving, and say they that are for the king. We produce my lord Howard, and we have taken care to summon the duke of Monmouth, by leaving subpoenas where it could be thought he was to be met with, with promises of his servants to deliver them to him in order to have the duke to be a witness for the king, this day [illegible] the meaning [illegible] they would [illegible] that they [illegible] this [illegible] that [illegible] world, [illegible] denied [illegible] promises [illegible] and [illegible] they, [illegible] with [illegible] the [illegible] who [illegible] two [illegible] used [illegible]

[illegible] your [illegible] side, [illegible] on the other side [illegible] witnesses have [illegible] in [illegible] piece.

My lord Howard [illegible] an account of these [illegible] times will be wonderful [illegible] I beg you would take [illegible] mind, I think these material circumstances [illegible] in all matters of fact [illegible] also have their credit [illegible] circumstances which do accompany them, the testimonies given of such facts are to be valued according as those circumstances keep [illegible] with, and humour, as I may so say, the fact that they are to evidence the truth of.

My lord Howard does therefore in the first place acquaint you that [illegible] there [illegible] discourse [illegible] my lord of Shaftesbury, and there concerning [illegible] intended to be had [illegible] he tells you how that my lord Shaftesbury was fully resolved upon [illegible] that things at length came to that pass that he was forced, to go from his

[illegible] could be said being disappointed by the duke of Monmouth and others, which he [illegible] to him with him and was retired to [illegible] near Woodstock [illegible] he was [illegible] Howard went to him (I think, he [illegible] sent to him) [illegible] lord Shaftesbury told him, that though [illegible] been [illegible] appointment [illegible] [illegible] that did [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the duke of Monmouth [illegible] [illegible] interest. That [illegible] [illegible] the [illegible] of things whatsoever, [illegible] with the duke of Monmouth. My lord Howard did endeavour to [illegible] lord Shaftesbury [illegible] Monmouth and [illegible] so much safety and [illegible] that he would have [illegible] with the duke of Monmouth, [illegible] friend [illegible] between [illegible] hand in hand. You find he [illegible] difficulties [illegible] this matter, [illegible] not able to bring the thing about, for [illegible] he had [illegible] with the duke of Monmouth [illegible] prevailed with him, my lord of Shaftesbury was [illegible] [illegible] [illegible] had appointed [illegible] meeting [illegible] time it was prevented, my lord Shaftesbury went away to Holland [illegible] [illegible] This is the substance of what my lord Howard [illegible] to that matter.

But, Gentlemen, [illegible] and I will tell you [illegible] I think [illegible] because the [illegible] that have made [illegible] [illegible] my lord Howard's [illegible] [illegible], [illegible] my lord Howard is particular as to the day after Michaelmas day, but he is not so particular when he comes to speak of other [illegible] upon which the [illegible] before you [illegible] [illegible] speaks more generally to the meetings at the [illegible] and my lord Russell [illegible] that they were [illegible] the middle of [illegible] [illegible] beginning of [illegible], and is not [illegible] to the day. I speak of this because that has been made [illegible] an objection [illegible] my lord Howard's testimony. And I will tell you [illegible] all the objections that have been made [illegible] this testimony [illegible] such time as I have settled it and laid before you what the whole of it amounts to.

Then comes my lord Howard and says that meeting with the duke of Monmouth some time after this, they began to talk together, and they thought that though the business had failed in the management of my lord of Shaftesbury, yet it was fit there should be [illegible] [illegible] of the business [illegible], but in order to settle the matter [illegible] that things may not go [illegible] [illegible] on, it was thought fit that they should resolve themselves into a certain number that were [illegible] one of another, in order to steer and [illegible] the matters the better among themselves. And they must be persons fit to be trusted, and in whom there should be an union [illegible] among them for their faithfulness [illegible], [illegible] all persons are not fit to [illegible] but only such as they agreed upon. The duke of Monmouth he undertook [illegible] lord of Essex and my lord Russell, the [illegible] persons for whom he would engage. [illegible] Howard for my lord Salisbury. And then they [illegible] to talk of some more, particularly [illegible] Sidney, but he was [illegible] man, [illegible] principle, and they were first to come to him, and [illegible] with him in another manner [illegible] rest. He was not to appear [illegible] duke of Monmouth [illegible] to take him in [illegible] [illegible] and then they [illegible] [illegible] to him. And [illegible] he was a [illegible] designed [illegible], and [illegible] the duke of Monmouth and my lord Howard [illegible] attack Mr. Sidney, they [illegible] him [illegible] day, and dined with him [illegible] put into [illegible], then [illegible] design [illegible] persons that were to [illegible]; and [illegible] [illegible] Monmouth [illegible], and my lord [illegible] [illegible] Hampden [illegible] lord of Salisbury, but my lord of Salisbury was never the [illegible] [illegible] out of the [illegible] quit him from being of the number [illegible] [illegible], [illegible] lord Essex and my lord Russell [illegible] [illegible] by the duke of Monmouth, Mr. Hampden undertaken for by Mr. Sidney, and my lord Howard, for by that time Mr. Hampden was come into the matter upon colonel Sidney's undertaking.

Now we are got, Gentlemen, by these steps till we come about the middle of January, but, says my lord Howard, I cannot positively say, it was this day, or that day of the month, but being about the middle of January, I conjecture it was about the 14th, but he is not positive to the day. He says, accordingly they went to Mr. Hampden's house, which was the place first designed for them to meet in. He says, then accordingly they did all six meet, and that it being Mr. Hampden's house, they thought it most proper for him who was master of the house, who usually [illegible] his guests welcome, to break silence, and [illegible] the business of the design they met about. He says, accordingly Mr. Hampden, after the first compliments of entertainment, did give an account of the business they were come about, and that it was in order to have a rising. This, he says, was proposed by Mr.

Hampden. He tells you, that they fell into debate about the time [illegible] concerning men, [illegible] arms, and money, and likewise concerning the place. He tells you the places where the rising was [illegible] to be, viz. Devonshire, Cheshire, [illegible] [illegible] [illegible]. Then he tells you concerning the time, it was debated, Whether it should be at the same time, or at several times; [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the business of money, [illegible] the duke of Monmouth had spoken of 10 or 30,000l. or some such sum [illegible]. But then, as [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] number, and others he has forgot. He particularly of the Campbells, sir John Cochran, and my lord Melvin, and he says, other persons [illegible] [illegible], but he cannot [illegible] [illegible] the names, [illegible] my lord Russell knew one of these persons, and the duke of Monmouth knew one other of them [illegible] [illegible] of his acquaintance to the earl of Argyle, the person that you know was proscribed [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] says that so [illegible] to on this matter went, that they thought fit [illegible] should be provided, a fit person to be sent into Scotland to treat with these gentlemen about this matter, and my lord Russell [illegible] he says, undertook to write [illegible] to be carried by this messenger to these Scotch gentlemen.

He says, pursuant to this consultation at Mr. Hampden's a fortnight or [illegible] thereabouts, which was about the beginning of February, there was the meeting at my lord Russell's house, and there they debated these matters over again, and the whole management of sending a messenger into Scotland was left to the discretion of colonel Sidney, and he undertook that work, that was his post that he was to manage; and he does say, that he does very well remember, that Aaron Smith was the person proposed then; and though he was unknown to some of the company, yet he was well known to others, and by reason of that knowledge that others had of him, they looked upon him as a person very fit, and every way qualified for it.

So that, Gentlemen, here is proved a consultation in order to the raising of men to infest the government, a discourse concerning money and arms for this end, and the places where, and the time when, and of conciliating a friendship with some discontented persons in Scotland, to join, and chime in with these conspirators in England.

And then there is yet more [illegible] very remarkable, because though my lord spoke it not [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] with us, but [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] people [illegible] into [illegible] and that was [illegible] to be [illegible] [illegible] in [illegible] him.

This, he says, was the result of that meeting, and that when the [illegible] [illegible] about three or four days after [illegible] [illegible] [illegible] of time [illegible] [illegible] [illegible] colonel Sidney [illegible] [illegible] together [illegible] went to [illegible] Sidney's house [illegible] [illegible] [illegible] [illegible] money out of [illegible] [illegible] there were several hundreds of [illegible] pieces of gold, and [illegible] [illegible] [illegible] took them [illegible] days after that, he saw him [illegible] Mr. Sidney again, and he says Mr. Sidney gave him an account that he had heard [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] that you have here [illegible] [illegible] by my lord Howard [illegible] [illegible] [illegible] [illegible] [illegible] and consenting to all [illegible] [illegible] [illegible] to the [illegible] [illegible] [illegible] the [illegible] [illegible], and [illegible] Mr. Hampden [illegible] guilty of [illegible] [illegible]. The first meeting was at his house, and there he did [illegible] [illegible] [illegible] had been formerly done [illegible] [illegible] the things broken, the silence [illegible] [illegible], the debate, which shews that he had been discoursing about it before, and had it in his thought before, or else he could not have propounded it as the end of their meeting.

Now this, Gentlemen, here is a positive fact, and as Mr. Williams says [illegible] no man living can give any answer to a positive fact but by some other thing that may be circumstances to oppose that fact. Now he says there are no circumstances that have been proved, that will give any credibility to what has been deposed, besides the positive oath of my lord Howard. So that, says he, your fact, though it be positively sworn, is not supported by any circumstances of the fact, that may give credibility to it. And he objects

very materially; for if it be not supported by credible circumstances, then indeed it would be less material; yet I cannot say, it would not be at all material; it is material, and you are to determine, whether you have sufficient evidence given you, to induce you to believe, that my lord Howard is at this time guilty of wilful and malicious perjury, for it is perjury, and that in the highest degree, if it be not true that he says; and God deliver all mankind from being guilty of any such thing. I leave that to your consciences, gentlemen, who are the judges of it.

But, says the king's counsel, here are circumstances that do support our fact, and the credibility of it. For, first, here is the circumstance of Aaron Smith, who was sent into Scotland by Mr. Sidney in pursuance of this design, and this circumstance my lord Howard does subjoin to what he has positively affirmed against the defendant. And this circumstance is a thing that may be helped by other proof; and what is this circumstance? say they, that Aaron Smith was sent into Scotland; and in order to prove that, they have called one Sheriffe, who is a man that keeps an inn at the post-house in Newcastle, from whence colonel Sidney told my lord Howard he had notice of his arrival at Newcastle, but had heard no more of him after that. And this Sheriffe swears directly, I saw that man they call Aaron Smith, when he was shewn to me before the king and the council; and Mr. Atterbury swears he shewed Aaron Smith to him, and then Sheriffe swears, that man you shewed to me was the man I saw at my house at Newcastle, that chimes in with the circumstance of fact that Mr. Sidney heard from him at Newcastle. And then there is the circumstance of time when he saw him there; says he, I saw him the Friday before Shrove-Tuesday, which they in the north call Easter's Even. He came to my house on Thursday night, and went away the next day, Friday; and he went with his guide, the other man, northward, in order to his journey into Scotland, as he himself said. Says he, I remember the time very particularly, it was the Friday before Shrove Tuesday last, this February was twelvemonth: and he went yet further, says he, I did not only see him when he went away, but when he came back again, for he left his man at my house all the time, and he tells you what his name was; for he says, Smith went under the disguised name of one Clerk, and he did then talk of going to the western parts of Scotland, he named Douglas as he thinks, though he is not positive in that, but he is in the person, that was the man. And, says he, I sent for this person, the other fellow, Bell, and he was the guide he had along with him. And upon Bell's examination, What says he? Says he, I remember that man came thither at that time to the other man's house: I take it upon my oath that is the man, and he went by the name of Clerk: he hired me to be his guide; I went out with him on Friday morning, and I went along with him all that day; but upon Saturday, which was the next day, going northward with him, my horse tired, and failed me: Thereupon I was forced to be left behind, but I overtook him on Sunday night following; I overtook him at such a place, and saw him within six miles of the borders of Scotland. I take it upon my oath, this is the man that was there under the name of Clerk; and at his returning back again I took notice of him, I went up to him, I drank with him, and we had discourse of our journey. He told me at first, he was to go to the west of Scotland, and so he went northward. After that, which was about ten or twelve days, he came back again, and so went southward towards London. This he doth swear directly to be at that time.

Now, Gentlemen, the time is wonderful material in that case, because that very time twelvemonth that they talk of, is the beginning of February. If you look upon your old almanack of the last year (I happened to have one in my pocket, and looked upon it, when the men gave their testimony) and there you will find, that the Monday before Shrove-Tuesday, when he says, he left him within six miles of the borders of Scotland, falls out to be the 19th of February; I will look upon it again, lest I should mistake; 'tis just so, and that humours the time that my lord Howard speaks of, which was about the middle of February; a few days after that, he says the money was given by Mr. Sidney; and then for the time for Aaron Smith to get to Newcastle, there is a fit space of time, for it falls out that the Thursday that he arrived at Newcastle, is the 15th day of February, and so it falls in well with my lord Howard's testimony, and so the Monday that he parted with him at the borders of Scotland was the 19th, which also just humours the time that he speaks of. So that here is a circumstance of fact to confirm his testimony, both as to the sending the messenger, and the circumstance of time. That he is the same man is proved by these two witnesses, who agree in this, that he was there about such a time; and it does likewise humour that other circumstance of place, that Mr. Sidney said he had heard from him from Newcastle, but not since; and then there is the other circumstance which backs and confirms all, There was not only a sending for these persons, but there is notice taken that these Campbells, who were to be assisting in this matter, were to come about the sham, and under the disguise of purchasing plantations in Carolina. About the beginning of June they came to town, the two Campbells, sir John Cockram, and Mr. Monroe. Sir Andrew Foster he tells you he met with some of the men, and they told him, they came about the business of Carolina; and so the cant of Carolina is made good in this circumstance that way; but when the plot brake out, these men skulk, one flies one way, another another; some were taken as they were escaping away by water; others

of them were taken upon the bed at noon-day in Moor-fields: Had the business they came over into England about been a fair, and a lawful, and honest business, why should they hide themselves? Why should any man sneak, and skulk and be ashamed to own an honest and lawful business? But this does humour and touch the thing exactly, as to that circumstance, that Carolina was only a cant for to disguise their coming over. These are the two only circumstances that seem to be pretty strong for them, to prove and support the credibility of what their witness has sworn.

For, Gentlemen, what a wonderful sort of expectation would it be, That we shall never convict a man of high-treason, unless you can bring a man to be a witness that is not concerned? For then all these persons must have been acquitted, for they intrusted none, it seems, but these six; they took care they would keep it amongst themselves. Do you think they called their servants to be witnesses of what they were about? That is a vain and idle imagination. In the Popish plot, what witnesses of it had you there? Were they strangers to the plot? No, you cannot expect any witnesses but such as the nature of the case will bear.

This is the meaning of the evidence that has been given for the king, and it carries a great weight in it. But they have made an objection, which indeed is not remote, but may concern the question very much. Say they, if we prove my lord of Essex was not there, or such a one was not there, would it not discredit the evidence of my lord Howard? Yes, certainly, it would wholly discredit it, and he were not to be believed at all; nay, which is yet nearer to the question, if Mr. Hampden, that had notice all along of the times fixed wherein this transaction was, to wit, about the middle of January and beginning of February. For because they talk of the prints, Mr. Hampden had from them sufficient notice and intimation of the time. If Mr. Hampden, that hath had all this notice, could have proved before you, that he was in France, or any other place at that time, that had been wonderful material. But all the circumstances that are any way significant to support the credit of this matter are very well proved; and so the testimony of my lord Howard is, by these concurrent circumstances of fact, sufficiently supported.

Now, Gentlemen, I must tell you, This being the substance of the evidence for the king; I will now, as near as I can, give you an account of the evidence for the defendant; it was opened by Mr. Williams very ingeniously for the advantage of his client, as every man is bound to say what he can for his client. He made a great many objections against my lord Howard; so if he could but shake the testimony of my lord Howard, then he might easily bring off his client; and if you, upon any thing that has been offered, either in evidence, or by way of observation fairly made from the evidence, do believe my lord Howard has forsworn himself, you must find Mr. Hampden the defendant, not guilty; but if you believe he has not forsworn himself, you must find him guilty. So all our matter is reduced into a very narrow compass; and therefore I must repeat it again what I said at the beginning, if my memory do not serve me to recollect all right, the counsel for the defendant shall have free liberty to inform the court of what has been omitted.

First, says Mr. Williams, My lord Howard was a man very deep in a conspiracy with my lord Shaftesbury, by his own acknowledgment, endeavouring to conciliate a friendship between the duke of Monmouth and my lord Shaftesbury: and so he had a great hand in the plot; and what he might do on purpose to get himself out of danger from that plot, and procure his pardon, is not known.

It is a very strange thing, that it should be an objection before he had his pardon, that he did it for fear, and to get his pardon; and when he has it, now the objection is, because he has his pardon; and he got it, say they, by this means. It seems, whether he had his pardon or no, it must be an objection against him: Before he had it, he was under the fear of not obtaining it 'till the drudgery of swearing was over; but now he has his pardon, What now? Why he does it on purpose to accuse other people. Why, he says no more now than what he has said before he was pardoned; and if after he is pardoned, when he is under no dread or fear because of his guilt, he says the same things that he did when he might be in fear, how can that be an objection to him? It cannot be thought he does it to save his own life, for that is as safe now by his pardon, as it can any way be; and it is, and must be a great satisfaction to his mind, and will be so to any other reasonable man's mind: And is a plain answer to the objection of his fear, (for it is a captious age we live in, that will make some specious objection or other, though it be not of any great weight.) But how can it be thought a man would come and swear too much, or too far, for fear he should not save himself; or, as they call it, swear himself into a pardon, when he has his pardon? It might be an objection before; but as long as he is under no such terrors now, but stands right, both by the laws of God and man to be heard as a witness, I think it would be hard for any one to come, and say, This man would forswear himself. What should provoke him to come and forswear himself, when he is under no danger as to his own particular? There might be an umbrage, I say, of an objection, before he had his pardon, though it was, indeed, no objection before; not a rational weighty one, to set aside his testimony. But nobody knows which way in the world to satisfy the minds of some sort of people.

In the next place, Gentlemen, says Mr. Williams, You are not positive as to the time; you say, it was about the middle of January, or the

beginning of February, and that is too general and wide; but you remember particularly to a day the business between you and my lord of Shaftesbury, That that was the day after Michaelmas-day: How can you be so particular as to the one, and not as particular as to the other?

Why, I will undertake that Mr. Williams, when he made the objection, must needs think of the answer that would be given to it. It is notoriously known, that the pressures these gentlemen thought they lay under, were what my lord of Shaftesbury said, Now they have got the juries into their own power, and no man is safe; they will find me or any man guilty, as they please; why, how came they to get juries into their own hands, but by having the sheriffs as they would have them? Now the sheriffs that are to return juries are, as all men know, that know any thing, sworn the day before Michaelmas-day; therefore he might very well, and had good reason to remember that day; when such a notorious thing happens to fall out at such a notorious time, it is easier for a man to remember that time, than to speak to the particular time of an action, done about the middle of a month, where there is not such a notorious circumstance. Why, I can tell you very well where I was upon the day before Michaelmas-day; upon that day, and the day after; for that very reason, because it was a notorious day about the swearing of sheriffs in London. But if you ask me, where I was the middle of January, or the middle of February, I cannot so well remember that. But there is credit to be given to a man that speaks to a notorious circumstance, and thereby proves the probability of what he says, though he should not be so particular in a thing that admits not of such a notorious circumstance.

Gentlemen, I make the objections as they are stated on the one side, and on the other side; and the answers that naturally flow to prove the matters before you one way or other; and you are to judge, you are to weigh them; and which has the greater credit with you, you are to take notice of.

He does say, in the next place, Here was a discourse of arms and armed men, and a great sum of money spoken of, but there breaks out nothing of this matter 'till July following; but this debate was in January and February before. For that matter, the answer that is given, and it seems to be a plain one, is, That they were to conciliate a correspondence with people that were abroad, and that they could not go on 'till they had effected that, and 'till these people came to join with them, which could not be without some time. And you hear the Cockrams and the Campbells came not to the town 'till June or July; so that it was not probable it should break out 'till then, because it was to be agitated upon their coming here. And so that objection is answered, they did not apprehend any such necessity for present engaging in it. For my lord Howard, because he thought it would be a work of time to settle the correspondence, and get these people to town, went down to his country-house in Essex, and from thence to Bath, for he did apprehend some considerable time must be spent before these people could come; and therefore he thought it convenient to take his retirement in the mean time.

Ay, but it is strange, says Mr. Williams, and he makes that another objection; he would have my lord Howard to draw in this accusation of Mr. Hampden, to procure his pardon, by going further than the other discoverers had gone. It seems, say they, Mr. Hampden was not thought of at first; but because West and Keeling had discovered a plot, my lord Howard to secure himself, must go a step further than they, and (as the defendant's counsel would have it) than the truth; and that is the stress of the objection. But the weight of the proof is quite different; for all men know, in the plot there were several parts. There was the business of Keeling and West, and that was the assassination of the king and the duke; but the duke of Monmouth, my lord Howard, and those other gentlemen, were for the business of the rising, though that might be in order to that other purpose; but they kept not company with those that were engaged in that part of the design. They were the underlings, the scoundrel plotters, that were concerned in the assassination. But these gentlemen looked upon themselves to be privy-counsellors, not to be the executioners; they were to be only advisers, what was to be done after the other business was over; and their consultations were for raising of men for an insurrection, not the business of the assassination of the king, that was not their province. Can it be an objection against my lord Howard, because he gives a testimony West and Keeling could not give? Could they go further than the killing of the king, which was their business: if any man should have asked my lord Howard about that matter, he would have made answer, it was not for that purpose that we met together at Mr. Hampden's and my lord Russell's; no, that was upon a particular business, and to a particular end and purpose.

Then he says too, that though my lord Howard comes here upon his oath, and declares these several matters that he hath deposed; yet he has given a different account of things elsewhere, and he has called several witnesses to that purpose. To whom my lord Howard several times upon his honour, upon his word, with eyes lifted up, and hands elevated to heaven, and many extraordinary protestations, declared that he knew nothing of the plot; and say they, if a man will at one time pawn his honour and his reputation for the truth of a thing, and after that, will come again to swear against all that matter, that is an argument that does sink the credit and reputation of that witness; and thereupon they call you several witnesses, some whereof are persons of great honour and quality. I think they begin first

with Ducas, servant to colonel Sidney, and he tells you, after his master was taken, my lord Howard came thither, and desired he might lie there; and desired the use of some plate and goods of colonel Sidney's; and then asked, what was become of his master? and when Ducas told him what he heard of the plot, that something was talked of about the assassination of the king and the duke, my lord Howard lifted up his eyes and his hands to heaven, and declared he knew nothing of it, but he believed colonel Sidney was a very honest man, and knew nothing at all of any such matter; and as for himself, rather than he would be taken or confined again, he would do any thing. This was the evidence they gave as to him. Then they come with Mr. Howard their second witness; for I would take them in order as they were produced, and he gives you an account, that he met with my lord Howard, and my lord Howard told him, he knew nothing at all of any plot, and did believe that colonel Sidney was innocent, and he did believe likewise that my lord Russell was innocent, and for his part he knew nothing of any such thing as a plot; but he says, when he began to talk to him, why did he make such a bustle, and go so often into the city and concern himself about the making of sheriffs? He answered, I do nothing but what is in a legal way; and he justified all that was done to be only in a legal way.

When once people come to believe, that the raising of tumults, and making seditions, stirs and noises, is a legal way to obtain their ends, as we know it is the tenet and principle of great many people, what will they not do under that pretence, that all they do is according to law? They think it is lawful by the religion they profess, to resist and oppose the government, and the Old Cause is a good cause to this day in some men's opinion, and they can die in it, and thank God for being concerned in it. And there are some people that say, the raising of arms by the king's authority against his person is lawful by the religion they profess, and they call themselves Protestants (how justly you may imagine); and if men will make insurrections to difficult the government, it is rebellion, and no man can justify it, let him pretend conscience, or what he will, it is rank treason, it is not saying I am thus persuaded in my conscience, that will excuse the man; if I steer myself by the dictates of a good and regular conscience, it can never be thought that I shall commit treason, but it is the effect of evil principles.

Was it not under the shape of religion, that that blessed martyr king Charles 1, of ever blessed memory, came to the block: Nay, and I have heard of some men in the late times that were engaged on that side, who finding that the king did prevail at the beginning of the war, because he had gentlemen of quality and spirit to appear for him, were at a loss to know which way in the world they should put a spirit in the common people to oppose the king; and some among them bid them to be sure to put religion to be but the pretence, and that would make them run headlong to what they would have them. Whose opinion that was, is not strange to any that know any thing of the history of those times. So that when once people take it to be the principle of their religion to oppose and resist all that are not of their persuasion, and for religion sake to resist authority, then they think all is lawful they can do to preserve their religion as long as they are wound up to that opinion.

The next witness, Gentlemen, is my lord of Clare, and he gives you an account of his discourse with my lord Howard. And by the way I must observe, what I am very sorry for with all my heart, to hear, that among gentlemen of quality and honour, discourses of the government, and the mal-administration of it, as they think, should be only matter of jest fit for their recreation, and laughter, only merry table-talk, as though government, so sacred a thing, were as mean as any trivial concern whatsoever. I am sorry to hear and see, that persons of great honour and quality should esteem it so. And I must be pardoned if I take notice of it: For matters of government, and yielding obedience to superiors, is a matter of religion, it is a serious matter, and every man ought to make conscience of it; to talk of government with reverence, as well as pay duty and obedience to it. And when I find it made a jest, I must be permitted to say that is not so well done, and whoever it is that makes it so, ought very much to be blamed.

My lord of Clare comes and testifies, that my lord Howard told him, he did not believe my lord Russell was guilty of what he was accused of, much less did he believe it of colonel Sidney, and when he began to talk about writings found in Sidney's closet, he said, there can be nothing of his writings found, that can do him or any man else any hurt. This is the substance of what that noble lord has said.

Then there is my lord Paget, and he likewise gives you an account, that he had some discourse with my lord Howard about the plot; and he told him too, that he did not believe any thing of this plot, or that my lord Russell and others accused had any hand in it. But I would observe this one thing upon my lord Paget's testimony, that still my lord Howard was wished joy by every body, and I am glad to see your heels at liberty, and the like. So that there was some jealousy of his being concerned; something or other there was in it. Says my lord Howard, I look upon myself as affronted, that any body should talk so of me. He was concerned that they should suspect him. But something there was at the bottom. Says my lord Paget, I am glad to hear you are out of it. For he began to imagine there must be some fire for all this smoke. That, gentlemen, was the discourse he had with him. But he says, that with my lord Paget there were discourses of his going beyond sea, but he did not go.

Then comes Dr. Burnet, and he tells you, that there were protestations made to him, and he has got the same words as the Frenchman had, that he did it with lifted up eyes and hands, he professed solemnly he was altogether a stranger to any such thing. The doctor says, he had heard there was a plot, and was persuaded of the truth of it, but he was a little shaken by what my lord Howard said to him. But now he is sufficiently satisfied there is a plot, and I am glad he is, for I think it scarce does remain a doubt, with any men that have any value for the religion and government we live under. And I know not how they could be better satisfied, than by the evidence that has been given of it, a main part of which was given by my lord Howard. All this before my lord Howard was taken.

Then comes in one Mr. Gisborne, and he tells you the same story, that a great while ago my lord Howard told him he knew nothing of the plot.

The next to him is Mr. Blake, and he tells you, that after such a time as the plot was discovered, and after my lord Russell was tried, and after my lord Howard had given evidence at the Old Bailey, he shewed him the warrant for his pardon, and Blake telling him that was not sufficient without an actual pardon; he replied, I think in my conscience I shall not have a pardon till the drudgery of swearing is over. But is that any argument? Here is a man under the drudgery of swearing; therefore he did not know any such thing as he swears. It carries thus much along with it, that it was uneasy to him, and there is a kind of a force put upon him to swear, as they say, in order to his pardon.

But now, Gentlemen, that will admit of this answer, and a plain one certainly it is, when a man comes over and over again to tell the world such a story, and gives such an account of himself, it must a little grate upon him, though it be his duty to tell the truth, and though, as Mr. Williams says, he is the best martyr that is a martyr for truth; even so say I on the other side; he is the best penitent that is a penitent for truth, and he is the best witness that is a witness for truth's sake, and he gives the best testimony of his repentance, that by his testimony declares the truth, though it be harsh and uneasy to him; for if I have any ingenuity, and have lived in good credit in the world, it must be a drudgery and irksome thing to call myself a traitor so often in a court of justice. It is true he might have given it a more moderate term, and yet withal upon these circumstances, he might have reason to call it in some sense a drudgery. But now, gentlemen, as he did swear it, before he had his pardon from time to time upon all occasions when he was called as a witness: so now the pardon is come, which they would have to be the reason of the continuance of his drudgery, he swears the same thing. He has his pardon under the king's seal, and though it might be thought they would keep him within the compass of his tether till he had done his evidence; now he has got that he desired, he swears the same thing. And now his pardon does not at all influence his testimony, he is not under any fear, but is as free as any subject the king has, and now he is upon his oath, he gives you the account you have had, and he did say all the same things, before such time as colonel Sidney, and my lord Russell were tried, that he says now.

Then, Gentlemen, you have in the next place witnesses called, several of them to give you an account of the conversation and disposition of Mr. Hampden; for says Mr. Williams, for a man to be guilty of a crime of this nature, there must be some kind of evil disposition to it, and so Mr. Williams would argue and make this inference. You see he is not a man of a turbulent, seditious and fractious spirit and temper, he is a studious person, very retired, that has been beyond sea much, and came not home till such a time. And if there were interlocutions between my lord Howard and my lord Shaftesbury, it was before he came into England and so he was not concerned in them. He says, that March last he was to go again, he had a mind to return again to France for his health; and what reason have we to imagine he should concern himself in the plot, when he was so studious a man, lived so retired a life, and intended to go abroad so suddenly? And for this you have my lord Paget, Mr. Pelham, sir Henry Hobart, Dr. Lupee, Monsieur Justel, and one Murray.

Mr. *Williams.* Murray, my lord, we did not examine.

L. C. J. It is true, I beg your pardon. Well then, these others tell you, they have been persons very intimately conversant with him, they never knew he concerned himself with any thing about government, but was of a quiet, peaceable demeanor, and was so far from that which the indictment talks of turbulency and sedition, that they never had any discourse with him about any such thing at all, save what Dr. Lupee says, who it seems lived with him about two years, and kept him company in his studies; and that once having some discourse about the Popish plot, He said he would venture his life, and any thing he had to preserve the king and government against this plot, he did very well, and if he had since declared, he would have ventured his life to have secured the king and government against this plot, I should have been glad to find him of that mind, I pray God you may find him to be so. But from the evidence, even of that Frenchman, it seems there was some jealousy in the world, and that he lay under hard censures as well as other people. For speaking of the plot, the advice given him was this: my lord Grey is gone, and the duke of Monmouth is gone, why won't you go? Why should that advice be given, if there were no suspicion of his being concerned? That he said, I will not go, and so they would make his staying here

to be an instance and proof of his innocence; why, gentlemen, if that should be so, then there was the same innocency in my lord Russell, and colonel Sidney, and all of them: for all the council of six, every one of them stayed, except the duke of Monmouth, and he indeed did abscond. And the same evidence that made the duke of Monmouth fly, and my lord Essex cut his own throat, convicted my lord Russell and colonel Sidney, and is now brought against the defendant, and has from time to time been given against the rest. We know no reason that they had to stay more than West or Rumsey had to stay and be taken, and yet that is not used by them as an argument of their innocency.

These are the evidences that have been given on the defendant's part; and I tell you as I go along what answers were given to it on the part of the king. As to what is spoken of his intention to go again into France, if he designed to go, why did he not go before all this mischief broke out? He came here at Michaelmas, and I may say he came, it may be at an unlucky time, when the city and its neighbourhood was in a distemper, and some men were blown with fears and jealousies. These might animate him, and inspirit him as they did other people, and put them into a ferment; but you find him attending in town constantly here until the matter was discovered, whatsoever his intentions were, it is much he did not put them into action, it is strange he did not go all this while, it had been much for his advantage that he had never come out of France, or that he had returned thither much sooner.

Against all this that has been urged for the defendant about my lord Howard, I will tell you what is the answer to it; and truly first I say, I am apt to believe my lord Howard did tell these gentlemen what they here testify; but was it ever thought, that any man that was guilty of high treason would presently proclaim his own guilt? Is it reasonable to imagine, my lord Howard would tell Dr. Burnet I am in a plot, and colonel Sidney is in a plot, and Mr. Hampden is in a plot, and make it his common talk? Nay, it is so far from being an argument of his innocency, that more naturally it may be turned upon them as an argument of his guilt. For if a man had not been concerned in the business at all, but were an honest man, and free from suspicion, what need I talk or concern myself to proclaim my own innocency, not being accused? Why must I tell colonel Sidney's footman, this man, the other man, that I know nothing of the plot, and neither I nor any other man I am sure is concerned in it? But that shews there was a dread and apprehension upon him of something that he was conscious of, and that lying within must have some vent, and this over-caution is an intimation that there was something more than ordinary in the matter. We take notice of it as a great evidence against a man that is accused for an highway-man, if he comes to such an ale-house or inn, and bids the people take notice I am here at such a time of the day, and that is a circumstance of time that will serve to answer a proof, it may be, that may be brought against him of a robbery done at such a time; but we always look upon that industry of their's, as a piece of artifice designed to patch up a testimony to evade a proof. So that the argument will turn the other way: and it is more for the advantage of these worthy gentlemen, that it should be turned the other way, for otherwise they would be thought to be persons ill affected to the government; that is, Dr. Burnet, my lord Paget, my lord Clare, and the rest. And if they have a mind to be thought otherwise, they must let the argument run that way as I say, and in charity we ought to believe the best of all mankind, until we find otherwise by them. We say then in charity, we suppose he thought it not fit to intrust you with his confessions; for you are all loyal men, I know it is the best answer that can be given, and that which they ought to value themselves upon for their own credit and reputation, and not to make an argument against my lord Howard, or against the credibility of his testimony in the matter.

I do not know, truly, Gentlemen, that I have omitted any one thing that is material, on the one side or on the other, of which there hath been any proof; but I must only repeat to you this, here is a matter of great concern and consequence; a matter wherein the peace of the government and the kingdom is concerned in a very high degree; a matter, that if there were another witness as positive against the defendant as my lord Howard, would amount to no less than high-treason. But as there is but one witness, backed with these circumstances to corroborate his testimony, it is but only a trespass; but I tell you it treads very nigh upon high-treason, and the tendency of it was to bring us all into confusion; and what would be the consequence of that, but to lay us open to the same mischiefs that we were under in the times of the late rebellion? For though men pretend never so fair, and veil it under the names of the security of the government and the Protestant religion; yet they would have done well to have tarried until they had a legal authority to call them to consult of these high matters that they pretend to secure; that had been well. What had these gentlemen to do to take upon themselves this power without authority?

Gentlemen, you have heard the evidence, and you see what it is. And I must say, the late evidences you have had concerning another business of this nature, I wish that might be said to preserve and support the credit of some persons upon whose testimonies lives have been taken away, as has been said, and is evident for the advantage of my lord Howard. I do not find that he has been guilty of perjury, as being concerned in taking oaths one way, and then giving evidence another, [illegible]

first taking oaths of secrecy, and then revealing; not but that notwithstanding all this, they may be believed, and God forbid but they should be believed according to truth. But I say, if objections of this nature are to prevail, we must never expect any great crime to be punished, because we must stay until persons that are strangers to the guilt of the fact come to give evidence of it, which is impossible to be done.

Therefore, Gentlemen, I must resolve it all into one head; you have the case of a gentleman of quality on the one side, and the peace and preservation of the government on the other side. You hear what is proved against him, the evidence given on this behalf, the objections that have been made by the counsel, which all of them, as near as I can remember, I have repeated to you, and I ask your pardon and their's if I have omitted any thing, and I desire to be minded of it. You hear the answers that have been given. And because the counsel were unwilling to give the court trouble, or themselves to make long speeches and observations, therefore I have been necessitated to do it as well as I can.

Upon the whole matter, my lord Howard has thus positively sworn the matter of fact charged in the indictment against the defendant; he has been supported by the witnesses that confirm the circumstances of Smith's going into Scotland, the Scotchmen's being here in June, and the sham and cant of Carolina. All which you have heard, and I make no question observed, and is not contradicted by any thing I hear that carries any probability of an answer. Therefore, gentlemen, I leave it to you, whether upon this evidence you will take it upon your consciences and oaths, that my lord Howard is guilty of wilful and corrupt perjury, then you must find the defendant not guilty; but if you think he has proved the matter fully, and his testimony is supported by those four witnesses, Atterbury, sir Andrew Foster, Sheriffe and Bell, then, gentlemen, you must find the defendant Guilty.

Juryman. My lord, we desire to ask one question. At the meeting at Mr. Hampden's house, I think my lord Howard says they went to dinner.

Just. *Holloway.* No, it was at col. Sidney's they went to dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at col. Sidney's they dined, not at Mr. Hampden's.

Then the Jury withdrew from the bar, and within half an hour the jury returned, and being called over answered to their names, and gave in their verdict thus.

Cl. of Cr. Are you all agreed of your verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. How say you? Is the defendant guilty of the trespass and misdemeanor whereof he is impeached, or Not Guilty?

Foreman. Guilty.

Which Verdict being recorded, the court rose.

Martis 12 Februarii, An. 1684. B.R.

L. C. J. Mr. Attorney, Have you any thing to move?

Att. Gen. I pray your judgment against Mr. Hampden, my lord, who was convicted the other day of a great misdemeanor.

L. C. J. Let Mr. Hampden come into the court then. [Which he did.]

Att. Gen. My lord, I need not aggravate the heinousnesss of the offence; for it appears both by the information, and upon the evidence to be beyond all aggravation, wherefore I shall only pray your judgment for the king, that you would please to set a good fine upon him, and that he find sureties for his good behaviour during his life.

Mr. *Williams.* May it please your lordship, I am of counsel for Mr. Hampden.

L. C. J. Are the rules out in this cause?

Mr. *Williams.* Yes, my lord, they are out.

L. C. J. Well then, what say you for Mr. Hampden?

Mr. *Williams.* Mr. Hampden does attend here according to the condition of his recognizance, and since Mr. Attorney hath prayed your judgment, I shall not stir any thing as to the indictment or the verdict, but all I have to say for him is this, Mr. Hampden is but heir apparent, his father is alive; and so though he has the prospect of a good estate, yet he has but little at present in possession; your lordship knows what Magna Charta says, that there should be a Salvo Contenemento in all fines, and how far that may be an ingredient into your lordship's judgment, I leave to your consideration.

L. C. J. For that matter, I cannot tell what estate his is, I have no knowledge of him, nor of his estate, whether it be great or small; but Mr. Williams knows very well that the crime, in conscience as well as law, in case it had been proved by two witnesses, would not only have wrought a forfeiture of all his estate, but a forfeiture of his life too, and all his reputation, would have bastardized his children, and would have attainted and corrupted his blood. So that there is no sort of imagination but that the crime was high enough of conscience; and certainly deserves, if we can impose it adequate to its desert, a very great punishment. Mr. Hampden nor his counsel cannot deny but that they had a fair and a full hearing, they had the liberty to say and prove all that they could, and you cannot but say, Mr. Attorney was very fair in making several concessions that he might very lawfully and rightfully have insisted upon. So that there can be no exception of that kind. I am sorry that Mr. Hampden, a gentleman of good quality as he is by birth, though he be a person I never saw before he came here the last day of the last term upon his Habeas Corpus, that I know of. I say, I am sorry that one of his quality and

education, a studious person, as it seems, by his own natural inclination, and a learned man, should be so unhappily engaged in a design of this horridly evil nature. But on the one side as well as we must take care of the subject, so on the other we must take care of the government. Here was a design of destroying the king, and subverting the government, and bringinging all into confusion. Of this design the defendant is convicted, and we must take care to proportion the punishment, and according to our consciences and oaths, and as we ought to have regard to the offender, so also we are to have regard to the government he has offended.

Just. *Withins.* Mr. Williams, it was amercements that were spoken of there in Magna Charta.

L. C. J. Ay, it was never meant of fines for great offences.

Then the Judges consulted together.

Just. *Withins.* Mr. Hampden, you know you are convicted of a very great offence, as great an offence as can be I think committed, unless it were high-treason. For the matter of it would have made you guilty, if there had been two witnesses. It was for conspiring to levy war against his majesty, and for conspiring to raise an insurrection and rebellion within the kingdom, a conspiracy, of which some other persons being lawfully convicted, they have suffered death for it. You are a person of an extraordinary good family, and I am sorry one of your family, that has flourished so long, and through so many generations in great honour and reputation, and great prosperity under the monarchy of England, should come to conspire to deprive that king of his government, whose ancestors have protected and defended your family, and to spoil that monarchy that has been the fountain of so much prosperity and honour to it. I am sorry it comes to my turn to pronounce the sentence of the court upon you, Mr. Hampden. I have not any personal knowledge of you, but I have heard of you, and heard heretofore very well of you. You have had a good education, and the report of a learned and ingenious person, which makes me yet wonder the more that you should engage in such a horrid design as this was. Indeed, Mr. Hampden, I am satisfied no fine can be too great, if any can be great enough for such an offence. We cannot take cognizance what your estate is, it is reported there is a great estate in your family, it has been always represented to be so.

Mr. *Hampden.* I have nothing but for life, and that is but little neither.

Just. *Withens.* I know not what it is truly, Sir. But it was always reported to me to be a very great estate; but whatsoever it is, we are to look after proportioning the punishment as near as we can to the offence. My lord and the court have considered of the matter, and they think fit to give this Judgment upon you.

"They set the fine of Forty Thousand "Pounds upon you, to be paid to the King, "and you must be committed till you pay "it."

L. C. J. And that you find sureties for your good behaviour during your life.

Att. Gen. I pray he may be committed for his fine.

L. C. J. Let it be so. Mr. Hampden, if you will apply yourself to the king, you may, and there perhaps you may find mercy; we must, according to the duty of our places and oaths, give such judgment as the law requires.

Just. *Withens.* Ay, in God's name. You are in the king's hands, and he may do what he pleases in it.

L. C. J. If a crime of this nature should have a little punishment, it might encourage offenders, and if we were to judge according to some verdicts that have been given here for less offences, where gentlemen have given very much greater damages than this fine amounts to, this would be thought a moderate fine. I am sorry any man should bring himself into these circumstances: The king, as he is the fountain of justice, so he is also of mercy, and you and all the rest of his subjects have cause to bless God that you live under a monarch that is very merciful. No doubt if you give an account of your contrition and sorrow for your great offence, and decently apply yourself to the king, he will think of shewing mercy to you; but justice is our work that are judges; and according to the methods of justice we think we cannot inflict less than we have done.

Mr. *Williams.* My lord, I pray his bail may be discharged.

L. C. J. Ay, his bail is discharged, he being committed.

Mr. *Williams.* And for the high-treason, he is discharged by the Habeas Corpus act.

L. C. J. Yes, he is so, for there is no prosecution.

Then Mr. Hampden was carried by the Marshal away prisoner.

303. The Trial* of LAURENCE BRADDON and HUGH SPEKE, at the King's-Bench, for a Misdemeanor, in suborning Witnesses to prove the Earl of Essex was murdered by his Keepers: 36 CHARLES II. A. D. 1684.

Hillary, February 7, 1684.

THE defendants, who had pleaded not guilty to an information filed last term, were now brought to trial.

Cl. of Cr. Crier, call the defendants, Laurence Braddon, and Hugh Speke.

Crier. Laurence Braddon and Hugh Speke, come forth, or else this inquest shall be taken by your default.

Mr. *Wallop.* They appear.

Cl. of Cr. Gardez votrez Challenges. Swear sir Hugh Middleton. [Which was done.] And there being no challenges, the twelve gentlemen sworn to try this cause, were these; Sir Hugh Middleton, Thomas Harriott, Thomas Earsby, Joshua Galliard, Richard Shoreditch, Charles Good, Samuel Rouse, Hugh Squire, Nehemiah Arnold, John Bifield, William Waite, and James Supple. Who being counted, proclamation was made in usual form for information.

Cl. of Cr. Gentlemen, you of the jury hearken to the record. His majesty's Attorney-General in this court has exhibited an Information against the defendants by the names of Laurence Braddon of the Middle-Temple, gent. and Hugh Speke of Lincoln's-Inn, gent. And the Information sets forth,

'That whereas Arthur earl of Essex, the '12th of July, in the 35th year of the reign of 'our sovereign lord Charles 2, by the grace 'of God, of England, Scotland, France and Ire-'land, king, defender of the faith, &c. was 'committed to the prison of our lord the king, 'in the Tower of London, for certain high-'treasons by him supposed to be committed. 'And the said Arthur earl of Essex being a 'prisoner in the Tower of London aforesaid, 'for the high-treason aforesaid, the 13th day 'of July, in the aforesaid 35th year of the 'reign of our said sovereign lord the king, that 'now is; not having the fear of God before his 'eyes, but being moved and seduced by the 'instigation of the devil at the Tower of Lon-'don aforesaid, in the county of Middlesex 'aforesaid, himself feloniously, and as a felon 'of himself, did kill and murder, as by an in-'quisition taken at the Tower of London afore-'said, in the county of Middlesex aforesaid, the '14th day of July, in the year aforesaid, before 'Edward Fernham, esq. then coroner of our 'lord the king, of the liberty of the Tower of 'London aforesaid, upon the view of the body 'of the said Arthur earl of Essex; and now in 'this court remaining of record more plainly 'does appear. They the said Laurence Brad-'don and Hugh Speke not being ignorant of 'the premises, but contriving, and maliciously 'and seditiously intending the government of 'our said lord the king of this kingdom of 'England, into hatred, disgrace and contempt 'to bring, the 15th day of August, in the afore-'said 35th year of the reign of our said sove-'reign lord the king that now is, and divers 'other days and times as well before as after, 'at the parish of St. Clement Danes, in the 'county of Middlesex, with force and arms, '&c. falsely, unlawfully, maliciously and sedi-'tiously did conspire, and endeavour to make 'the subjects of our said lord the king of this 'kingdom of England, to believe that the in-quisition aforesaid was unduly taken, and that the said Arthur earl of Essex, by certain 'persons unknown, in whose custody he was, 'was killed and murdered. And to perfect and 'bring to effect their malicious and seditious 'contrivances aforesaid; they the said Lau-'rence Braddon and Hugh Speke at the parish 'of St. Clement Danes, in the county of Mid-'dlesex aforesaid, the 15th day of August, in 'the 35th year aforesaid, falsly, unlawfully, 'unjustly, maliciously and seditiously did con-'spire to procure certain false witnesses to 'prove, that the said Arthur earl of Essex, was 'not a felon of himself, but that the said earl 'of Essex, by the said persons unknown, was 'killed and murdered: And to persuade other 'subjects of our said lord the king to believe this to be true, they, the said Laurence Braddon and Hugh Speke, falsly, maliciously and 'seditiously, then and there in writing did de-'clare, and cause to be declared, the said Laurence Braddon to be a person that would prosecute the murder of the said earl of Essex; to the great scandal and contempt of the go-'vernment of our lord the king of this kingdom 'of England, to the evil example of all other in 'the like case offending, and against the peace 'of our sovereign lord the king, his crown and 'dignity. To this Information the defendants

* From a Pamphlet, intitled, "The Trial of Laurence Braddon and Hugh Speke, gent. upon an Information of High Misdemeanor, Subornation, and spreading False Reports. Endeavouring thereby to raise a belief in his majesty's subjects, that the late earl of Essex did not murder himself in the Tower, contrary to what was found by the Coroner's Inquest. Before the Right Hon. Sir George Jeffreys, knt. and bart. Lord Chief Justice of his Majesty's Court of King's-Bench, and the rest of the Rev. Judges of that Court, holden at Westminster, on Friday, Feb. 7, 1684."

'I do appoint Benjamin Tooke to print the 'Trial of Laurence Braddon and Hugh Speke; 'and order that no other person presume to 'print the same. GEO. JEFFREYS.'

'have severally pleaded not guilty, and for 'their trial have put themselves upon the 'country, and his majesty's Attorney-General 'likewise, which country you are: Your 'charge is to enquire, whether the defendants, 'or either of them, are guilty of this great mis-'demeanour whereof they are impeached, or 'not guilty? If you find them, or either of 'them guilty, you are to say so; if you find 'them or either of them not guilty, you are to 'say so, and no more, and hear your evi-'dence*.'

* The Indictment in Latin runs thus:

Mich. 35 Car. 2. Rot. 54. B. R.

'ss. Quod cum Arthur Comes Essex duode-'cimo die Jan'. anno, &c. 35. commiss' fuit 'prison' Dom' Regis Turris London, pro qui-'busdam alt' prodition' per ipsum perpetrari 'supposit', et idem A. Comes Essex existen' 'prisonar' in Tur' London' præd', pro alta 'proditione præd', 13 die Jan', anno regni dict' 'Dom' Regis 35 suprad', Deum præ oculis 'suis non habens, sed instigatione diabolica 'mot' et seduct', apud Tur' London præd' in 'com' Midd', seipsum felonice, et ut felo de se, 'interfecit et murdravit, prout per inquisition' 'capt' apud Turr' London præd', in Com' 'Midd' præd' 14 die Julii, anno suprad', coram 'Edwardo Farnham Arm', tunc Coron' dict' 'Dom' Regis libertat' Turr' London, super 'visum corporis præd' A. Com' E. coram Do-'mino Rege de recordo remanen' plenius li-'quet et apparet. Quidam tamen Laurentius 'Braddon de Medio Templo London Gen', et 'Hugo Speke de Lincoln's-Inn in com' Midd' 'Gen', præmissor' non ignar', sed machinan' 'et malitiose, et seditiose intenden' guberna-'tion' dict' Dom' Regis hujus regn' Angl' in 'odium, vilipend', et contempt' ducere' 15 die 'Augusti, anno regni dict' Dom' Regis nunc '35. suprad', et diversis al' diebus et vicibus, 'tam antea, quam postea, apud paroch', &c. vi 'et armis, &c. falso, illicite, malitiose, et sedi-'tiose conspirabant, et conabantur causare sub-'dit' dict' Dom' Regis hujus regn' Angl' cre-'dere, quod inquisitio præd' indebite capt' fuit, 'et quod præd' A. Com' E. per quasdam per-'son' ignot', in quar' custod' fuit, interfect' et 'murdrat' fuit, et ad malitiosas et seditiosas 'machination' et intention' suas præd' perfi-'cien', et ad effectum redigend', iidem L. B. 'et H. S. apud paroch', &c. dicto 15 die Au-'gusti, anno 45 suprad', falso, illicite, injuste, 'et seditiose conspiraver' procurare quosdam 'falsos testes ad proband', quod præd' A. Com' 'E. non fuit felo de se, sed quod idem A. Com' 'E. per præd' person' ignot' interfect' et mur-'drat' fuit, et ad persuadend' al' subdit' dict' 'Dom' Regis credere hoc fore verum, iidem 'L. B. et H. S. falso, malitiose, et seditiose ad-'tunc et ibidem in scriptis declaraver', et de-'clarari causaver' præfat' L. B. fore person', 'quæ prosequebatur murdrum præd' A. Com' 'E. in maximum scandalum et contempt' gu-'bernation' Dom' Regis hujus regni Angl', in 'malum exemplum omnium al' in tali casu de-'linquen, ac contra pacem dict' Dom' Regis 'nunc, coron', et dignatat' suas, &c. Unde 'idem Attorn' dict' Dom' Regis nunc ge-'neral', &c.'

Then Proclamation was made for evidence.

Mr. *Dolben.* May it please your lordship, and you gentlemen that are sworn; This is an information preferred by Mr. Attorney-General, against the defendants Laurence Braddon and Hugh Speke, and the information does set forth, that whereas Arthur late earl of Essex, the 12th of July last, was committed to the Tower of London for certain treasons supposed to have been by him done: And the said earl being so committed prisoner to the Tower for treason, not having the fear of God before his eyes, feloniously and as a felon did kill and murder himself, as by an inquisition taken before the coroner of the Tower liberty may more fully appear; yet the defendants Laurence Braddon and Hugh Speke not being ignorant of the premises, but designing to bring the government into hatred and contempt, the 15th day of August last, in the parish of St. Clement Danes in this county, with force and arms, falsly, unlawfully, maliciously and seditiously did conspire together to make the king's subjects believe, that the inquisition aforesaid was unduly taken, and that the said earl of Essex did not murder himself, but was by certain persons unknown, in whose custody he was, murdered. And it further sets forth, that these defendants, Laurence Braddon and Hugh Speke, designed to disturb and disquiet the minds of the king's subjects, and to spread false reports, did conspire to procure certain false witnesses to prove that the said earl of Essex was not a felon of himself, but was by some persons unknown killed and murdered: And to persuade other subjects of our sovereign lord the king to believe the said report, they did falsely, maliciously, unlawfully and seditiously cause to be declared in writing, that the said Laurence Braddon was the person that did prosecute the said earl's murder. And this was to the great scandal of the government, to the evil example of all persons in like case offending, and against the peace of the king, his crown and dignity. To this the defendants have pleaded not guilty; if we prove it upon them, we make no question you will find it.

Att. Gen. (Sir Robert Sawyer.) May it please your lordship, and you gentlemen of the jury, Mr. Speke and Mr. Braddon, these two gentlemen, are accused of as high conspiracy as ever has or could well happen in our days, of throwing the murder of a person that killed himself upon the government. And I must acquaint you, their design was of an higher nature than barely that; for this gentleman, my lord of Essex, was committed to the Tower for the late plot, and being so committed, when he had killed himself there, that was more than a thousand witnesses to open the eyes of the peo-

ple, and confirm the belief of the conspiracy And one would have thought after that, there had been an end of the design, that these protestant gentlemen, as they call themselves, were carrying on; when the earl of Essex, a person of that quality and worth, should go to murder himself upon the sense of what he was guilty of. So that the design, gentlemen, was to stifle the plot, and at the same time they must throw this ill thing that the earl had committed upon himself, upon the government: That, gentlemen, was the main disgrace, in order to stifle that great evidence of the plot. And Mr. Braddon must of his own head, not being put on by any of the friends of the earl of Essex, who were all very sensible the earl had done this fact, committed this murder upon himself; but I say, he out of a true principle to manage the Protestant cause, as they call it, but indeed it was the plot, he becomes the prosecutor of this business, and you will find him by the proofs in the case, a man of many like projects. For you will find him value himself upon these titles, that he is the prosecutor of the earl of Essex's murder, and the inventor of the Protestants flails, an instrument, I suppose gentlemen you have all heard of.

Now, gentlemen, to make this appear to the world, letters are sent into all parts of England of this bruit and report. He himself goes about to find evidence: for it was so great a truth, and there was such a plain proof that the earl of Essex had killed himself, that he must labour it to get evidence. And he goes about it accordingly, and at length he meets with a little child of twelve years of age, and he prepares for him, all with his own hand writing, a deposition, which is a feigned story all of it, and in every part of it will appear to be false, and there he mightily solicits this young boy to sign it. He comes to his father's house, carries him in a coach, forces him away, and forces him to sign this paper that he had thus prepared for him, all of his own invention and writing; and with the like confidence as he appears here, (for so he does appear with very great confidence, as you may observe) he attests it himself. And, gentlemen, we shall shew you, that here up and down the town he makes it his common discourse what he was in hand with, and makes his boast of himself to be the prosecutor of the earl of Essex's murder, and he had as good a confederate as himself, Mr. Speke, and he having an interest in the country, whither the news must be sent all abroad, and Mr. Braddon must go to pick up evidence, I knew not where a great way off, of a murder committed in the Tower. We shall prove to you, he had letters missive and recommendatory from Mr. Speke to a gentleman with whom Mr. Braddon was to advise; for they looked upon it to be as dangerous an enterprize almost as the plot itself, as indeed it was; therefore they must be wary, and Mr. Braddon is advised to go by a wrong name; so this Mr. Speke and Braddon were to carry on and make up this tragi-comedy, for I can call it nothing else, for the ridiculousness as well as the dangerousness of the design. The report was to be, that this murder of the earl of Essex was committed by the officers that attended my lord, and to fall out in time when his majesty was in the Tower, as if the king himself had a hand in it. We shall trace it in all parts of it by several witnesses, and hope you will make them an example, first by finding them guilty, and the court afterwards by a severe punishment for such a villainous practice, to scandalize the government with the murder of a noble peer. We shall begin with shewing you the inquisition, or rather first with the convictment of the earl of Essex for high treason, because it is laid in the record by way of inducement. Call Mr. Reynolds. [Who was sworn.] Have you the warrant of commitment of my lord of Essex.

Mr. *Reynolds*. Yes.

Att. Gen. Shew it the court Let the clerk read it.

Mr. *Reynolds.* This is the commitment that was delivered the lieutenant of the Tower, together with my lord of Essex.

Cl. of Cr. This is directed to Thomas Check, esq. lieutenant of his majesty's Tower of London. Subscribed Leolin Jenkins, and dated———

'Sir Leolin Jenkins, knight, of his Majesty's
'most honourable Privy Council, and
'principal Secretary of State.

'These are in his majesty's name to will 'and require you to receive into your custody 'the person of Arthur earl of Essex herewith 'sent you, being committed for high-treason, 'in compassing the death of the king (whom 'God preserve), and conspiring to levy war 'against his majesty. And him the said earl 'of Essex to keep in safe custody, until he 'shall be delivered by due course of law. And 'for so doing this shall be your warrant. 'Given under my hand and seal at Whitehall, 'the 10th day of July, 1683. L. JENKINS.'

'To Thomas Check, esq., Lieut. of
'his majesty's Tower of London.'

Att. Gen. My lord, we will then read the inquisition, that the earl, being thus in the Tower, killed himself.

Solicitor General. (Mr. Finch.) Shew the inquisition. Where is Mr. Farnham?

Mr. *Farnham.* Here I am. The inquisition is returned here, and is upon record.

Cl. of Cr. Here it is, Number 11. [He reads.]

'London, *ss*. An Inquisition indented, taken at the Tower of London aforesaid, in the 'county of Middlesex, the 14th day of July, 'in the year of the reign of our sovereign lord 'Charles 2, by the grace of God of England, Scotland, France and Ireland, king, defender of the faith, &c. the 35th, before Edward Farnham, esq. coroner of our said lord the

'king, of the liberty of the Tower of London, 'aforesaid, upon view of the body of Arthur 'earl of Essex, then and there lying dead; by 'the oaths of Samuel Colwal, esq., William 'Fisher, Thomas Godsel, esq., Thomas Hunt, 'Nathaniel Mountney, esq., Thomas Potter, 'William How, Robert Burgoine, Eleazer 'Wickins, Thomas Hogsflesh, Henry Cripps, 'Richard Rudder, William Knipes, John 'Hudson, John Kettlebeter, Lancelot Cole-'son, Morgan Cowarn, Thomas Bryan, Wil-'liam Thackston, Richard Cliffe, Zebediah 'Pritchard, W. Baford and Theophilus Carter, 'good and lawful men of the liberty of the 'Tower of London aforesaid, who being charg-'ed and sworn to enquire for our said lord the 'king, when, by what means, and how, the 'said Arthur earl of Essex came to his death, 'upon their oaths do say, that the said Arthur 'earl of Essex, the 13th day of July, in the '35th year of the reign of our sovereign lord 'the king aforesaid, at the Tower of London 'aforesaid, in the county of Middlesex afore-'said, about the hour of nine in the forenoon of 'the same day, not having the fear of God 'before his eyes, but being seduced and moved 'by the instigation of the devil, of his malice 'aforethought, at the Tower of London afore-'said, in the county aforesaid, then and there 'being alone in his chamber, with a razor of 'the value of one shilling, voluntarily and 'feloniously did cut his throat, giving unto 'himself one mortal wound, cut from one 'jugular to the other, and by the aspera ar-'teria, and the windpipe, to the vertebres of 'the neck, both the jugulars being thoroughly 'divided, of which said mortal wound the said 'Arthur earl of Essex instantly died; and so 'the jurors aforesaid, say upon their oaths, that 'the said Arthur earl of Essex, in manner and 'form aforesaid, then and there, voluntarily 'and feloniously, as a felon of himself, did kill 'and murder himself, against the peace of our 'sovereign lord the king, his crown and dignity. 'In witness whereof, as well I the coroner 'aforesaid, as the jurors aforesaid, to this in-'quisition, have interchangeably put our seals, 'the day and year abovesaid.'

Att. Gen. Call Mr. Evans and Mr. Edwards. After this, my lord, we shall shew you, that Mr. Braddon went about the town, and declared the earl was murdered, and he was the prosecutor. There is Mr. Evans, swear him. [Which was done.] Pray will you give an account to my lord and the jury, what you know of Mr. Braddon's going about and declaring he was the prosecutor of my lord of Essex's murder?

Mr. *Evans.* My lord, all that I know of this matter, is this. About the 17th of July last—

L. C. J. (Sir George Jefferies.) When is the inquisition?

Cl. of Cr. It is the 14th of July.

L. C. J. Well, go on.

Evans. The 17th of July last I was at the custom-house key, shipping off some lead, and the person that brought me the warrant, I told him I could not execute it without one of the commissioners' officers; and I bid him go to Mr. Edwards, who was the next officer adjoining to the key, and he went to his house, and told him I was at the water-side, and had a warrant, which I desired him to be present while I executed it; Mr. Braddon it seems was then present in the place with Mr. Edwards when this was told him, and hearing my name, Mr. Braddon came down with Mr. Edwards, and found me then at Smith's coffee-house, and Mr. Edwards told me Mr. Braddon had been with him examining his son, in relation to a matter of a razor that was thrown out of my lord Essex's window; and I presently replied, I desired they would not speak of any such matter to me, for I had seen the coroner's inquisition upon oath, where it was declared, the thing was so and so, and two persons had sworn what seemed to be contrary to this; and therefore I desired they would forbear any such discourse to me.

L. C. J. Who, they?

Evans. Braddon and he were together.

L. C. J. Who he? Man.

Evans. Mr. Edwards. And withal I made my application to Mr. Braddon, and I desired him he would not meddle with such a matter, for I thought it might be prejudicial to him and Mr. Edwards too. Mr. Braddon made me no answer, but went directly out of the room.

L. C. J. What do you mean by so and so, and a razor thrown out of a window? We do not understand your so and so.

Evans. Relating to a matter of a razor.

L. C. J. Pr'ythee, we do not know what that matter of a razor is?

Evans. A razor that was said to be thrown out of my lord of Essex's window.

L. C. J. Tell us what the story was, man.

Evans. Mr. Edwards told me, that Mr. Braddon was with him to examine his son, relating to a matter of throwing a razor out of my lord of Essex's window: this is that he said, to the best of my remembrance.

Sol. Gen. Was Braddon present there?

Evans. Yes, Mr. Braddon and Mr. Edwards were both present.

L. C. J. Well, what was the discourse between you, tell us plainly.

Evans. Says Mr. Edwards to me, Mr. Braddon has been to examine my son about such a matter, so I desired he would not discourse any thing of that matter to me, and I told him, I advise you not to proceed; for I told him it would be prejudicial both to him and Mr. Edwards too.

L. C. J. What is meant by this matter? he examined my son about a matter, and I desired him he would not discourse of this matter; What is all that matter?

Just. *Holloway.* What did you apprehend by it?

Evans. I apprehend that Mr. Braddon had been to examine Mr. Edwards's son about such a matter.

L. C. J. What matter, man?

Evans. His dispersing of any such report.

L. C. J. What report?

Evans. A report of throwing a razor out of my lord of Essex's window

L. C. J. Here is a razor thrown out of a window, and a matter of I know not what.

Just. *Withins.* Suppose a man should throw a razor out of a window, what signifies that?

L. C. J. Where heard he of that matter?

Evans. This is all I heard, my lord, I am upon my oath.

L. C. J. But I wish thou wouldst let us know what it is thou didst hear?

Mr. *Jones.* Was there no talk of a bloody razor?

Evans. No, not a word of it.

L. C. J. How came you to be frighted then, and to be unwilling to hear of that matter, and to tell him, you thought it might be prejudicial to him and Mr. Edwards?

Evans. I told him I had seen the coroner's inquest, where it was proved, that the razor lay in such a place; therefore I desired they would not speak to me of any such matter, and I desired Mr. Braddon not to proceed in it, for you may do yourself and Mr. Edwards too some prejudice.

Att. Gen. Look you, Mr. Evans, what did you understand by the throwing the razor out of the window, and giving him caution not to proceed? The razor might be found there, what was the meaning of it?

Evans. May it please your lordship, there was a report at the custom-house that very morning the earl of Essex cut his throat, that there was a razor thrown out of the window.

Mr. *Jones.* You did advise Braddon, you say, not to proceed in it?

Evans. Yes.

Mr. *Jones.* How came you to advise him so?

Evans. Because it might be prejudicial to him and Mr. Edwards too.

Att. Gen. Was there no talk between Mr. Edwards, Mr. Braddon and you, that Mr. Braddon would be a prosecutor of the murder of the earl of Essex, upon your oath?

Evans. Not one word or syllable. For Mr. Braddon spake not one word, good or bad: I gave an account to secretary Jenkins of every word that passed.

Att. Gen. Did not you advise him not to prosecute the business?

Evans. I did advise him not to disperse such a report.

L. C. J. What report?

Evans. Of a razor being thrown out of my lord of Essex's window.

Att. Gen. Why, suppose there had been a razor thrown out of the window, what then?

Evans. Then it was contrary to the information and evidence given before the coroner.

L. C. J. Why so? why might it not be thrown out after it was found in the place where the inquisition says? Thou art a wonderful cautelous man; where is the danger of the report of a razor being thrown out of a window? There must be something more in it, if we could but get it out of him.

Evans. Will your lordship be pleased to hear me?

L. C. J. Ay, I do hear thee, but I do not understand thee.

Evans. May it please your lordship, I will read the words *verbatim* that I gave to the secretary.

L. C. J. Why, I believe you can read, and I make no doubt you can write too, or you are not fit to be a custom-house officer.

Evans. I put in this paper to the secretary, and will repeat what I said then, as near as I can, upon my oath.

L. C. J. I care not a farthing what you delivered to the secretary; tell us what thou hast to say plainly?

Evans. May it please your lordship, I will read it what it is.

Sol. Gen. You may look upon your paper to refresh your memory, but you must not read it here.

Evans. If it please you, I will tell you the reason and occasion I had to go to the secretary.

L. C. J. I know not what occasion thou hadst to go to the secretary, nor do I care what thou didst when thou camest there, it may be thou madest three legs, it may be never a one; what is that to us? What canst thou say to the matter here before us?

Evans. That is all I can say, my lord, It was an accident that they came into my company. And to tell you the manner and the occasion, that person that brought me the warrant, saying to Mr. Edwards that I was below, Mr. Braddon hearing my name named, comes down with Mr. Edwards, for he had told Mr. Edwards I was related to him, and they both came to the coffee-house, and there they began to discourse about this matter.

Just. *Withins.* Who began to discourse?

Evans. Mr. Edwards.

L. C. J. Well, what was it he said to thee?

Evans. Mr. Edwards began thus: Says he, Mr. Evans, this gentleman has been at my house to examine my son concerning a report that is spread abroad concerning a razor that was thrown out of the window of the earl of Essex's lodgings that morning he cut his throat. I hearing of that, said I, Gentlemen, I have read the Coroner's inquest that is in print, and it is otherwise declared there: And therefore let there be no discourse of any such matter, for I believe no such thing. And, said I to that gentleman, Mr. Braddon, pray forbear meddling in any such thing, for Mr. Edwards is a poor man, and has divers children, he may be ruined, and you likewise may be ruined yourself, if you proceed any further in it.

Att. Gen. We shall interpret this matter by our other witnesses.

L. C. J. Ay, so you had need, for there is nothing to be made of this fellow's evidence.

Mr. *North.* Pray, by the oath you have

taken, when you gave that advice, did Mr. Braddon make you an answer?

Evans. No, none at all.

Mr. Braddon. [Lifting up his hands in an unusual manner.] Mr. Evans. Pray, will you answer one thing?

L. C. J. Pray, Sir, let us have no elevation of hands. Your confidence does not so well become you in a court of justice, this is not a cause wherein you need use so much confidence.

Braddon. Sir, pray answer, did not I——

L. C. J. What is it you would ask him?

Braddon. My lord, I desire he may be asked, whether I, with a brother of his, did not come to his country-house, on the Monday immediately after my lord of Essex's death, and whether at his table there was not a report then of a razor being seen to be thrown out of my lord of Essex's window?

L. C. J. Pray ask by your counsel, they are most proper to ask questions for you. Tell them what you would have asked, and don't make long stories yourself.

Mr. Wallop. Were you not in company with Mr. Braddon, the Monday after my lord of Essex's death?

Mr. Freke. What was the report, Sir, at your table, upon the Monday next after my lord of Essex's death?

Evans. My lord, if your lordship please——

L. C. J. Pray, Sir, make a short and plain answer to what questions are asked you, and let us have none of your circumlocutions, and your discourses of the matter; but let us understand what you say.

Evans. I will, my lord.

L. C. J. What is your question?

Braddon. Whether I was not upon the Monday after the earl of Essex's death at his table, where there was a discourse of a report that a razor was thrown out of the window, before murder was cried out, and concerning a boy which went to take it up?

L. C. J. What a story is here! Pray ask him a fair and short question, if he can remember what was said at his house? We are got quite to the custom-house and the coffee-house again, and I know not where.

Mr. Freke. What discourse was there at your table, Sir, the immediate Monday after the earl of Essex's death, concerning a razor thrown out of a window?

Evans. My lord, this, to the best of my remembrance, is what I have to say, and remember of the thing, that a gentleman being with him——

L. C. J. Who?

Evans. Mr. Braddon.

Mr. Wallop. Where was this?

Evans. In the country.

Mr. Wallop. Where, in what country?

Evans. In Essex.

Mr. Wallop. What was the place's name?

Evans. At Wansted, my lord; and being there, and he plucking out a paper.

L. C. J. He, who?

Evans. A brother of mine, that that gentleman came down with to see me.

L. C. J. What is his name?

Evans. His name is Mr. William Hatsell.

L. C. J. With whom did he come?

Evans. With this person.

L. C. J. With this person, who is this person?

Evans. Mr. Braddon.

L. C. J. Why can'st thou not name him, without this wire-drawing? Thou art a most exact custom-house officer, I'll warrant thee, thou can'st not make a plain answer to a plain question.

Evans. My lord, I beg your pardon, I do not know the methods of the court.

L. C. J. Pry'thee, I care not for thy methods, nor thy matter; but deal plainly with us.

Evans. My brother, Mr. Hatsell, came down along with Mr. Braddon to my house at Wansted in Essex, on the Monday, after my lord of Essex's death, and coming down, my brother, Mr. Hatsell, pulled out the Coroner's inquest upon oath that was printed, and shewing of it to me, I read it; and as soon as ever I had read it, said I, Mr. Edwards, that was at the Custom-house, that very morning when the earl of Essex's throat was cut, did declare to me upon the Custom-house key, That his son did declare that the razor was thrown out of the window, which seems to contradict this paper, that says, it was found lying by him.

Mr. *Freke.* Was this before Mr. Braddon was with Mr. Edwards?

Evans. I can't tell that.

Mr. *Freke.* Was it before Mr. Braddon, and Mr. Edwards came to you to the coffee-house?

Evans. Yes, I believe it was.

Att. Gen. You say Mr. Braddon came with Mr. Hatsell to your house at Wansted?

Evans. Yes.

Att. Gen. Who was the person that told you this story?

Evans. He brought down the printed paper with him, and upon plucking out that paper, and reading of it, the story was told.

Att. Gen. Pray, who was the person that told him it was so reported at the Custom-house?

Evans. I made that answer myself, immediately upon reading the paper; for I observed what the Coroner's inquest had returned, and upon that I made this observation, That it seemed to contradict what was declared at the Custom-house that morning my lord of Essex cut his throat.

Att. Gen. Pray, who declared there that the razor was thrown out of the window?

Evans. It was Mr. Edwards told me.

L. C. J. Why consider with yourself now; You say first of all Edwards and Braddon came to me to the coffee-house.

Evans. That was at another day.

L. C. J. I am sure you swore so at first.

Evans. With your lordship's favour——

L. C. J. And with your favour too, Sir.

Pray will you hear me? I have heard you a great while, I am sure, to no purpose. But consider with yourself, and pray be pleased to reconcile what you say now with what you said at first, if you can. You say first of all Edwards and Braddon came to me to the Custom-house, and found me out at the coffee-house, and that Edwards should say, somebody had been with his son, in order to examine him about a razor that was thrown out of my lord of Essex's window, and that you immediately cried out, Have a care of that, for that contradicts the inquisition that I have seen in print, which declares as though the razor was found in the room. And after that you say, it was that you saw the inquisition when Hatsell came down from Braddon, and you told him of the report at the Custom-house. How came you, if you had not seen the inquisition till then, to give out such words at the Custom-house? Have a care of meddling with that, because it contradicts the inquisition?

Evans. My lord, this was several days before that.

Att. Gen. Yes, my lord, this discourse at Wansted was before that at the custom-house.

Mr. Wallop. This that he now speaks of is an answer to Mr. Braddon's question, which was about a discourse that has passed before this other at the Custom-house. This that he speaks of, the discourse at a coffee-house, was afterward, but indeed he first spake of it; but there were two distinct matters at several times. This last of the Custom-house was, when he had made the examination of the boy, as that witness says.

L. C. J. Therefore I think it was fit to explain it, for it looked very inconsistent before, what thou saidst at first, and what thou sayest now; but if thou tellest me thy Essex-matter was before thy coffee-house matter it is well, otherwise the matter, I assure you, looked very ill.

Evans. This is the truth, my lord, and I can tell no more.

Att. Gen. Take the times, my lord, and you will see he does speak very notably. The 13th of July my lord of Essex murdered himself, the 14th of July the inquisition was taken before the coroner; pray, what was the day that Hatsell and this gentleman came down to you to Essex?

Evans. I cannot tell that, Sir, truly; but it was before this matter of the examination of the boy.

L. C. J. But pray let me ask you one question, if your matter about the inquisition in the country was before the matter of your cautious discourse at the Custom-house, how came you to tell them, I heard this report of a razor thrown out of the window that morning the earl of Essex cut his own throat.

Evans. Mr. Edwards reported this same thing that very same morning to me and several others at the Custom-house key.

L. C. J. Why did you not tell us this before?

Evans. I beg your pardon, my lord, I do not understand the methods of the court.

Mr. Wallop. Mr. Hatsell gave the occasion by pulling out the inquisition.

L. C. J. Pray, Sir, make your observations anon, let the king's counsel go on with their evidence.

Att. Gen. What discourse had Mr. Braddon with you then at that time when Hatsell came down with him to your house you say, and pulling out the inquisition you read it, and made answer, you heard at the Custom-house key such a report that very morning the earl murdered himself?

Evans. Mr. Braddon was walking up and down the room, I did not speak it to him, but I spake it to Mr. Hatsell; but I believe Braddon over-heard and took notice of it.

Just. *Withins.* Did he concern himself about it?

Evans. No, not much, I did not hear him say any thing, but he walked up and down the room.

L. C. J. Now after all this discourse of the matter, for aught I can understand, the matter is but this: he says, Edwards before the meetings either at his house in Essex, or at the coffee-house by the Custom-house, reported to him, as though the earl of Essex had not murdered himself, but somebody else had done it for him. And this was reported at the Custom-house that morning the earl of Essex cut his own throat, and he hearing this report at the Custom-house at that time, afterwards comes Braddon and Hatsell to his house into Essex, and after Hatsell had shewed him the paper of the Inquisition in print, he said, I heard some discourse from Mr. Edwards at the Custom-house of a quite other nature; and then he says Braddon and Edwards came to the coffee-house, and there it was he desired them not to talk of that matter; for, said he, that contradicts the Inquisition I saw before. This is the substance of what he said.

Att. Gen. And hereby it does appear, that Braddon, and Evans, and Edwards, and Hatsell, are all of a gang.

L. C. J. Have you the information he gave in to the secretary, Mr. Attorney-General, that was given before the council?

Att. Gen. Yes, it is much the same with what he hath said now.

Evans. Yes, my lord, it is verbatim as I have declared now.

Att. Gen. Only this other part of Hatsell and the meeting in Essex was spoken of since, that was not declared before.

Evans. No, my lord, that I did not speak of, because I was not examined about it.

Att. Gen. That was part of the secret.

Evans. No, it was common discourse with me. And I did not think any thing of it; what Mr. Edwards said at the Custom-house, was spoken to a great many others as well as me, and the people seemed to be surprized with an account of the thing at the first news of my lord of Essex's death. And if I had

thought it material, I could have brought a great many that were by then; but Mr. Edwards is here brought himself, I suppose he will not deny it.

Sol. Gen. Look you, Sir, you say that very morning my lord of Essex killed himself, Mr. Edwards discoursed, and made this report to you at the Custom-house, pray tell what the discourse was; what he said to you; and then tell us what time of day it was?

Evans. To the best of my remembrance it was about 11 o'clock; there were several persons standing together, among the rest captain Goodland, and some of the searchers, and Mr. Edwards was there; and said he, I am informed from home, that my boy has been at home, and given an account to my wife, that being in the Tower, he saw a hand throw a razor out of a window, and he named my lord of Essex's window; and this Mr. Edwards did not only tell me, but to a whole coffee-house of people, this matter of fact.

Just. *Holloway.* Did not Mr. Edwards tell you, that somebody had been examining his boy about that report?

Evans. That was the second time, when Mr. Braddon and Mr. Edwards came together.

Just. *Holloway.* Who was it had been examining his boy did he say?

Evans. Mr. Braddon, he said, had been to examine his son.

Just. *Holloway.* That was after the discourse at Essex, that Braddon came to examine his son concerning the razor.

Mr. *Wallop.* Yes, it was after the discourse at Essex, where Hatsell plucking out the paper, Evans told Mr. Braddon first of this razor.

L. C. J. Well, make your defence by and by, Mr. Wallop: do not make your remarks now.

Att. Gen. Come, Mr. Edwards. Crier swear him. [Which was done.]

L. C. J. What do you ask him, Mr. Attorney?

Att. Gen. Mr. Edwards, Pray, will you give the court an account of this business; for I do not know whether you heard what that gentleman that went out last said, he says, you raised this story, pray give an account what you know of it?

Sol. Gen. Pray tell what you know of Mr. Braddon's coming to your son, and what discourse he or you had about the murder of the earl of Essex?

Mr. *Edwards.* The report that Mr. Braddon came to enquire after, was with us some three days before; it was in our family three days before, and upon the 17th of July——

L. C. J. What was the report, Mr. Edwards, before Mr. Braddon came to you?

Edwards. The report I have already declared before the council.

L. C. J. But you must tell us too what it was.

Edwards. The report of the boy the 13th of July, about ten o'clock, as I was informed by my family, and by the boy afterwards by word of mouth, was this; he comes in about ten o'clock, says he, I have been at the Tower (to one of his sisters), and I have seen his majesty and the duke of York, and the earl of Essex has cut his throat, and I see an hand throw a razor out of the window, and one came out of the house, a maid, or a woman in a white hood and a stuff coat, and took it up, and went in again, and then I heard a noise as of murder cried out. This was the boy's report, and more than as his report I cannot speak to it.

L. C. J. This was your son, was it not?

Edwards. Yes, the younger of them. The two boys were that morning going to Merchant-Taylor's school together as they used to do, and by the way hearing the king was in the Tower, this younger boy that was well acquainted with the Tower, gave his elder brother the slip and went into the Tower, and rambled about from place to place.

Att. Gen. Did not you examine him?

Edwards. Ay, I did examine him.

Att. Gen. Did not you find that he denied it again?

Edwards. No, I did examine him, and I found no denial of any thing at all that he had reported, till Mr. Braddon came to make enquiry. As soon as he came to make the enquiry, and I understood what Mr. Braddon's business was, I begged of him that he would not insist upon it by no means, I begged of him as if I had begged for my life, but he was so zealous in the business, that nothing would satisfy him. And after I had told Mr. Braddon that which I could not deny, which was the boy's report, I left him and went down to the Custom-house, and some of my family discoursed the boy at that rate, that he began to deny it, and in less than half an hour's time recollected himself, and began to own it again; and so the boy was off and on till the time he was before the Council; and to this day he seems to stand in the denial, whether he will do it now or no I cannot tell.

Att. Gen. Did you acquaint Mr. Braddon That you had found this boy to be a lying boy, and detected him in lies several times?

Edwards. May it please you, Sir, I acquainted him with thus much: said I, Mr. Braddon, as I have dealt ingenuously with you, to let you know what the boy's report was, so I must likewise tell you, that I cannot, nor will undertake to assert the truth of it; and presently upon that my daughter told me, the boy had many times excused his playing truant by false stories.

Att. Gen. Did you acquaint Mr. Braddon, that your boy was a lying boy at that time?

Edwards. I think I did not at that instant of time.

L. C. J. How old is this boy you talk of?

Edwards. About 13 years of age, my lord.

Att. Gen. What do you know of Mr. Braddon's forcing your boy to sign any thing that he had prepared after this?

Sol. Gen. When you told him your boy had denied it, what did he say? Was he pleased and satisfied?

Edwards. He was not told it by me, but some of my family.

Sol. Gen. How did he behave himself?

Edwards. At the same time they told him he denied it, at the same time they told him he owned it again.

Sol. Gen. How did Mr. Braddon behave himself?

Edwards. Like a civil gentleman. I saw nothing else by him, but that he was very zealous in the business, that is the truth of it, nothing could persuade him to desist.

Just. Holloway. Pray did you ask Mr. Braddon, or did he tell you, what was the reason that he was so inquisitive about this matter, and the report of the boy?

Edwards. As to that he told me, he would let me know the reason of it, which was out of conscience.

Mr. *Jones.* Did not Mr. Braddon carry your son before several justices of peace?

Edwards. Before none as I know of; not one truly to my knowledge.

Att. Gen. Did you understand he had taken your boy from your house in a coach.

Edwards. Never till he carried him into his majesty's presence before the Council, and I knew not that till the boy came home.

Mr. *Thompson.* Mr. Attorney, Have you done with him? may I ask him a question?

Att. Gen. Ay, ask him what you will.

Mr. *Thompson.* If I understand you right, Sir, this report of the boy's was that morning that the earl of Essex was murdered.

L. C. J. Was murdered, murdered himself, man.

Mr. *Thompson.* My lord, I mean the day of his death. Now I would ask you, Sir, when that was?

Edwards. The boy's report was this, Sir,—

Mr. *Thompson.* I ask you not what his report was, but when? What day it was?

Edwards. The 13th of July. That day the earl of Essex cut his throat.

Mr. *Thompson.* How many days after that was it when Mr. Braddon came to you?

Edwards. It was not till the 17th of July.

Mr. *Thompson.* Had you discoursed of the report of your boy at the Custom-house, or any where else, that same day he came to you?

Edwards. I cannot say that.

Mr. *Thompson.* Had you discoursed it before Mr. Braddon spake to you, upon your oath?

Mr. *Edwards.* Yes, I believe I had.

Sol. Gen. Had you discoursed it before your boy told you?

Edwards. I should then indeed have been the contriver of the story.

Att. Gen. So it is like enough you were.

Sol. Gen. Had you discoursed it to any body before you went home to your own house, upon your oath, Sir?

Edwards. Upon my oath then I discoursed nothing of that nature, nor a tittle of it, for I knew nothing of it, till I had it from my own family.

Sol. Gen. Did you not discourse of it before you went home?

Edwards. No, when I came home they told me of it.

L. C. J. I ask you again, Sir, Did not you tell it before you came home?

Edwards. About ten o'clock, I having heard the news of the earl of Essex's cutting his throat, at the Custom-house, I stepped home, being very near to my own house, and as soon as I came in at the door, the family began to give me an account what news the boy brought in.

L. C. J. That was the first time you heard of it?

Edwards. Yes, that was the first time I heard of it.

L. C. J. And did you not discourse of it till after that?—*Edwards.* No.

L. C. J. Call Mr. Evans, let him come in again.

Att. Gen. Let Mr. Evans come in again.

L. C. J. Mr. Evans, I would ask you this question, There were three times that you say, I think, that you had discourse with Edwards about the matter, as you call it, once at Essex, and twice at the custom-house?

Sol. Gen. No, not in Essex, it was Hatsell and Braddon, my lord, that came to him there, Edwards was not there.

L. C. J. When you first had a discourse with Edwards about this matter, what was it that Edwards did say to you?

Evans. Being upon Custom-house key, and captain Goodland and several others standing upon the key, that very morning my lord of Essex's throat was cut, about eleven o'clock Mr. Edwards came to us, being standing upon the key, and told us, That he was informed his boy had been at the Tower, and came home and told his mother, he saw a hand throw a razor out of a window, and that he went to take it up, and a maid or a woman came and took it up, and went in again.

L. C. J. Evans, Did he tell you this as if he had been at home?

Evans. No, I think it was that he had it from home by some hand or other.

Edwards. I was at home.

Evans. My lord, At two o'clock in the afternoon, when he came again to the Custom-house, he did tell us he had been at home, and his boy did tell him the same story.

L. C. J. But when he had told you before he had dined, did he say, he had been at home?

Edwards. My family can testify I was at home between ten and eleven o'clock.

Evans. To the best of my remembrance he told me he heard so from home.

L. C. J. Before he went home, you say, he told you of this, and that was ten o'clock in the morning, and about two o'clock in the afternoon, he said, he had been at home, and it was true.

Mr. Evans. Yes, my lord.

Edwards. My lord, I was at home.

L. C. J. Mr. Edwards, Did you tell him so, or did you not?

Edwards. It is like I might say so about ten o'clock, but not before I had received the report at home.

Mr. *Evans*. I understood it so, my lord, that he had heard from home.

L. C. J. I ask you this upon your oath, mind the question, and answer me plainly, Did you speak to him, that you had such a report from home, or did you not?

Edwards. When I told it him, I had it from home, for I brought it from home.

L. C. J. Nay, Did you tell him you had such a report from home at ten o'clock, or no?

Edwards. I told him that I had met with such a report.

L. C. J. From whom?

Edwards. From my family at home, for the boy came not to me to tell it.

L. C. J. Then did you see Mr. Evans about two o'clock that afternoon?

Edwards. 'Tis probable I did.

L. C. J. Did you, or did you not?

Edwards. Yes, I believe I might; I beseech your lordship give me leave to speak. Mr. Evans and I am conversant forenoon and afternoon every day, we have business together.

Evans. We have business, my lord, about shipping of goods.

Edwards. But, my lord, if you please, I will tell you, that is the occasion of our being together.

L. C. J. Answer me my question, did you, or did you not tell him so?

Edwards. I did not acquaint him with it before I had been at home, and received it from my own family.

L. C. J. Look you, Sir, don't you go about to evade the question, to trifle with the court, you must answer me my question directly, and upon your oath, did you tell him you had notice from home of such a report, or no?

Edwards. I did not receive notice from home, but I brought it from home.

L. C. J. Did you tell him you had it from home.

Edwards. I told him I had it from my family, who told me the boy had made such a report.

L. C. J. Did you tell him you had it from your boy, or received notice from home about it?

Edwards. I did not tell him any thing before I had been at home.

L. C. J. Well, then, answer me this question. Did you tell him in the afternoon at two o'clock; Now I have been at home and examined my boy, and find it so as I told you?

Edwards. I examined my boy at dinner, and I found the boy agreed with the report of my daughter, and confirmed it.

L. C. J. I ask you what you told Mr. Evans, not what your boy or your daughter told you?

Edwards. It is probable I might tell Mr. Evans the same story after dinner at two o'clock, that I did before.

L. C. J. Now tell us the passage again, Mr. Evans, as you heard it.

Evans. To the best of my remembrance, at two o'clock in the afternoon, Mr. Edwards came, and told us he had examined the boy, and says he, the boy has confirmed all that I told you.

L. C. J. But before that in the morning, what did he say?

Evans. I cannot say exactly the time, but I think it was about ten o'clock. There were four or five more besides myself standing at the Custom-house key, and Mr. Edwards came to us, and told us, says he, I am informed from home, as I understood it, not that he had been at home, but that he heard it from home, that his boy had been at the Tower, had seen an hand throw a razor out of the window.

L. C. J. What said he at two o'clock?

Evans. He said he had examined his boy, and he said the same thing, that he told us he had heard in the morning.

Att. Gen. My lord, we are now but upon the entrance of our evidence, to shew upon what slender grounds, how slight a foundation there was for this gentleman to undertake this prosecution.

Sol. Gen. Mr. Edwards, pray let me ask you a question, Did Mr. Braddon tender any paper to your son to sign?

Edwards. I was informed he did do it afterwards, but I saw him not do any such thing.

Sol. Gen. Did you never say that Mr. Braddon had tendered a paper to your son to sign?

Edwards. I do not believe I ever did say so, I do not remember any such thing.

Sol. Gen. Pray recollect your memory, and tell us whether you did, or did not?

Edwards. I thank God, Sir, that he has given me my memory and my understanding, I bless him for it.

Att. Gen. But it were well if thou hadst any honesty too.

Edwards. And honesty too, Sir: I have not lived these thirty-nine years at the Custom-house without honesty. I never had my honesty questioned to this day. I am sure nobody can tax me with dishonesty.

Sol. Gen. Pray, Mr. Edwards, let your anger alone for a while, and answer the question that I shall ask you: Did your son refuse to sign that paper?

Edwards. He did sign it at last.

Sol. Gen. Did he refuse to sign it?

Edwards. I do not know whether he refused it or no.

Just. *Withens*. Did you hear that your son refused it?

Edwards. I did hear that he had signed it.

Just. *Withens*. But did you hear that he refused to sign it?

Edwards. The boy did not tell me he had refused to sign it. I did not hear him refused it.

L. C. J. Thou dost prevaricate very strange-

ly, I must tell thee that, notwithstanding thy reputation of thirty-nine years of honesty: Prithee, answer plainly, Did you hear at any time, that your son had refused to sign it?

Edwards. No, my lord, I did not, to the best of my remembrance.

L. C. J. That is a plain answer, man; but thou dost so shuffle up and down, one cannot tell what to make of what thou sayest.

Mr. *Thompson.* Sir, I desire to ask you one question, Whether ever Mr. Braddon and you had any former acquaintance?

Sol. Gen. Pray, stay, Sir, and if you please, spare your question a little, for we have not yet done with Mr. Edwards. Mr. Edwards, pray answer me, Did Mr. Braddon ever tell you, that he had other informations to confirm this report of your son from others?

Edwards. Truly, I do not remember he said any such thing.

Sol. Gen. Did you ever say he told you so? Consider of it, and remember your former examination.

Edwards. 'Tis like since he may have said so, but not at his first coming.

Sol. Gen. At his first coming did your son sign his paper then?

Edwards. No, he did not, as I am informed, I saw it not.

Sol. Gen. But afterwards you say, Mr. Braddon did tell you he had other evidence to confirm it.

Edwards. It may be he might, I cannot say it positively.

Att. Gen. You say he did not sign the paper at his first coming?

Edwards. No, I am informed he did not.

Sol. Gen. How do you know he did sign it at last?

Edwards. My wife and daughter's information.

L. C. J. But how then can you say, That you never heard he did refuse it.

Edwards. My lord, he did not tender a paper to sign, till he had been two or three times there, as I have heard, it was not tendered the first time he came.

L. C. J. I wonder how thou hast escaped thirty-nine years with such a reputation.

Edwards. My lord, I never was thought otherwise, nor I hope never gave any occasion for such a thought.

L. C. J. I assure thee I do not, nor can take thee for one.

Edwards. I hope I have done nothing to make your lordship think the contrary.

L. C. J. Yes, thou hast. Thou didst nothing but shuffle up and down, thou art to consider thou art upon thy oath, and must answer questions plainly.

Edwards. My lord, I do answer as truly as I can.

Att. Gen. Hark you then, Mr. Edwards, answer me.

L. C. J. Speak the truth, and nothing but the truth, that is all that is required of thee; no court of justice ought to be afraid to hear truth. Let truth come out, of God's name.

Att. Gen. Did Mr. Braddon ever tell you, That he had other evidence beside your son?

Edwards. I do not remember he said any such thing at his first coming.

L. C. J. How thou dost shuffle again! Answer plainly.

Att. Gen. I ask you, Whether ever he did say it?

Edwards. Yes, he did say so afterwards.

Sol. Gen. I must ask you one question more, (for I see it is very difficult to get it out of you) Pray did he tell you that he had other evidence besides your son, before he signed the paper, or after?

Edwards. It was before, as I take it. I speak to the best of my knowledge, my lord, I can say no more.

L. C. J. If thou hast a mind to continue the reputation thou hast got, as thou sayest, the way is to answer questions, and speak the truth plainly, let it concern whom it will.

Edwards. I labour to do it, my lord, to the best of my understanding and capacity.

L. C. J. I would not have thee say a tittle more than the truth, but let the truth come out.

Mr. *Freke.* Now Sir, I would ask you, if they have done with you, Did you ever know Mr. Braddon before the 17th of July? Or did you ever see him before?

Edwards. No, I never had any knowledge of him, nor ever heard a word of him.

Mr. *Wallop.* Mr. Edwards, the question was asked of you, Whether Mr. Braddon did say, there was other evidence besides your son; Pray when was that?

Edwards. He did not at the first time, but afterwards he did.

Mr. *Wallop.* That was a good while after, he had been with the boy first?

L. C. J. Make your observations by and by, Mr. Wallop. This is not a time for them.

Att. Gen. Then where is Edwards, the boy? [Who was brought forthwith into the court.]

Edwards. I charge you in the presence of Almighty God, speak truth, child.

Sol. Gen. And so should you too.

Edwards. Be sure to say nothing but the truth.

L. C. J. And child, turn about, and say, Father, be sure you say nothing but the truth.

Att. Gen. My lord, this is the boy, he is very little and very young, will your lordship have him sworn? What age are you of?

W. Edwards. I am thirteen, my lord.

Att. Gen. Do you know what an oath is?

W. Edwards. No.

L. C. J. Suppose you should tell a lie, do you know who is the father of liars?

W. Edwards. Yes.

L. C. J. Who is it?

W. Edwards. The devil.

L. C. J. And if you should tell a lie, do you know what will become of you?

W. Edwards. Yes.

L. C. J. What if you should swear to a lie? If you should call God to witness to a lie, what would become of you then?

W. Edwards. I should go to hell-fire.

L. C. J. That is a terrible thing. And therefore, child, if you take an oath, be sure you say nothing but what is truth, for no party, nor side, nor any thing in the world; for that God, that you say will call you to an account, and cast you into hell-fire, if you tell a lie, and witness to a falshood, knows and sees all you do, therefore have a care, the truth you must say, and nothing but the truth.

Crier. Pull off your glove, and hearken to your oath. [Then he was sworn.]

Sol. Gen. And now remember you call God to witness to the truth of what you say.

Att. Gen. Young man, look upon that paper, is that your hand?

W. Edwards. Yes.

Att. Gen. Did you sign that?

W. Edwards. Yes.

Att. Gen. Prithee tell the court, how thou camest to sign it?

L. C. J. Ay, child, be not afraid. Tell the truth, for if thou tellest the truth, thou needest not be afraid, but if thou tellest a lie, thou hast need to be afraid; let nobody, whatever has been said to thee, affright thee from telling the truth.

Sol. Gen. Don't be afraid of thy father, or any body, but tell plainly what thou knowest, and speak only the truth.

Att. Gen. How came you to sign that paper?

W. Edwards. Mr. Braddon bid me sign it when he had writ it.

L. C. J. Hark thee, child, Did he take it from thee what he writ, or did he write it from himself? Come hither, child, be not afraid, nobody here will do thee any hurt.

Then the Boy was lifted up upon the table before the Judges.

L. C. J. Look upon that paper, didst thou put thy name to that paper, child?

W. Edwards. Yes.

L. C. J. Whose hand-writing is that paper, besides thy name?

W. Edwards. Mr. Braddon's.

L. C. J. Did he bring it ready written?

W. Edwards. He writ in our parlour.

L. C. J. How came he to write it?

W. Edwards. He said it was for the earl of Essex, to give to his wife.

L. C. J. And what did he ask thee before he writ that?

W. Edwards. He asked me, whether I saw any thing at the Tower, and so I told him, yes.

L. C. J. Ay, tell us what you told him, and be not afraid, child, but tell the truth.

W. Edwards. I told him I was in the Tower, and saw a razor thrown out of a window.

L. C. J. You told him so, and then what said he to you?

W. Edwards. He bid me speak the truth.

L. C. J. Was that all the words you had?

W. Edwards. I afterwards went with my brother into the Tower, and I shewed my brother the place, and then afterwards Mr. Braddon writ this, and he said it was to give to the countess of Essex.

Just. Holloway. Did he read it to you after he had writ it?—W. Edwards. Yes.

Just. Holloway. And did he ask thee, whether it were true?—W. Edwards. Yes.

L. C. J. And didst thou tell him it was true?—W. Edwards. Yes.

L. C. J. And didst thou tell him all that was in that paper was true?—W. Edwards. Yes.

L. C. J. Did you tell him all that was writ in that paper before he writ it down?

W. Edwards. Yes.

L. C. J. Prithee mind the question, and speak truth, Didst thou tell him all that was in that paper before he writ it down?

W. Edwards. Yes, I told him, and so he writ it down.

Just. Holloway. You heard it all read to you, you say?—W. Edwards. Yes.

L. C. J. Then I ask you again, Did you tell him all that was in that paper was read to you, before he writ it down?—W. Edwards. Yes.

L. C. J. And after you had told him, he writ it down?

W. Edwards. I told him as he writ it down.

L. C. J. And after such time as he had writ it down, did he read it to you?

W. Edwards. Yes.

L. C. J. And then you put your name to it?

W. Edwards. Yes.

Att. Gen. I pray, my lord, he may be asked this question, Whether or no, when he first brought it in, the boy did not deny to sign it?

L. C. J. Did he bring the paper thither before thou signedst it?

W. Edwards. It was upon the table.

L. C. J. Didst not thou refuse to put thy name to it?—W. Edwards. Yes.

L. C. J. Why?—W. Edwards. I was afraid.

L. C. J. Why?

W. Edwards. For fear of coming into danger.

L. C. J. Why, what danger could there be? There was no danger if it was truth.

W. Edwards. That was not the truth.

L. C. J. Which was not truth? Was not the paper that he had written truth?

W. Edwards. No.

L. C. J. How so, child? Was not that thou toldest him the truth?—W. Edwards. No.

L. C. J. Tell the truth now then.

W. Edwards. So I do.

Sol. Gen. Then he offered it first to you, and bid you sign it, and you denied to put your hand to it, because it was not true?

W. Edwards. Yes.

L. C. J. And how long after did he offer it to you again?

W. Edwards. A little while after.

L. C. J. But did you tell Mr. Braddon it was not true, when you refused to sign it?

W. Edwards. No, I did not.

L. C. J. Why didst thou refuse to sign it then?

W. Edwards. I was afraid, because it was not true.

L. C. J. Didst not thou tell Mr. Braddon it was not true?

W. Edwards. I did not tell Mr. Braddon it was not true.

L. C. J. Why then wast thou afraid to sign it because it was not true at one time, and yet did sign it, though it was not true, at another time?

Sol. Gen. Child, didst thou give Mr. Braddon any reason, why thou didst not sign it at that time?—*W. Edwards.* No, Sir.

Sol. Gen. How didst thou come to sign it? Did any body speak to thee between that first time thou refusedst to sign it, and the second time thou didst sign it?

W. Edwards. He would fain have got my aunt to have signed it.

L. C. J. Thou sayest, thou didst first refuse it, because it was not true?

W. Edwards. Yes.

L. C. J. And then afterwards thou didst sign it?—*W. Edwards.* Yes.

L. C. J. Then I ask thee, who persuaded thee to sign it after that time that thou still refusedst it?

W. Edwards. My mother was afraid to have me sign it.

L. C. J. Who persuaded you to sign it?

W. Edwards. Mr. Braddon said there was no harm in it, so I did it.

L. C. J. Did Mr. Braddon then persuade you to sign it?

W. Edwards. He said there was no harm in it, that was all.

L. C. J. Did you do it at his desire?

W. Edwards. Yes.

L. C. J. And you refused it at first when he desired it?—*W. Edwards.* Yes.

L. C. J. What, because it was false?

W. Edwards. Yes.

L. C. J. Why then wouldst thou sign it afterwards, if somebody did not persuade thee to it?

W. Edwards. He told me there was nothing of harm in it.

Att. Gen. Hadst thou any money offered thee by Mr. Braddon?—*W. Edwards.* No.

Att. Gen. Hadst thou any money promised thee?—*W. Edwards.* No.

Att. Gen. Hadst thou any thing else offered or promised thee?

W. Edwards. No, nothing at all.

L. C. J. You have heard what he has said, gentlemen?

Jury. No, my lord, we have not heard a word.

L. C. J. Then I will tell you what he has said exactly. He says, that Mr. Braddon writ it from him; that he writ it in the room while he was there; that after such time as he had writ it, Mr. Braddon read it to him: He says, that he had carried his brother to show him the place where he assigned that the razor was found in the Tower: He says, that after such time as the writing was finished, Mr. B——— offered it him to sign, and he refused to sign it, and I asked him the reason why, and he says, because it was false; he says some short time afterwards Mr. Braddon came to him again.

W. Edwards. No, Sir, it was the same time.

L. C. J. Well, the same time Braddon was at him again, and told him there was no harm in it, and therefore desired him to sign it, and because he would not, he would have his aunt to have signed it; and he says, that Braddon telling him there was no harm in it, he did sign it.

Sol. Gen. But withal he says, that it is false.

L. C. J. Ay, he swears now it is all false.

Mr. *Freke.* Did you tell Mr. Braddon it was false?

L. C. J. No, he says he did not.

Mr. *Freke.* Did your sister at all discourse with you after you had dictated to Mr. Braddon? Pray what discourse had you with her after Mr. Braddon writ that paper, before you refused to sign it?

L. C. J. Do not ask any leading question, Sir, but propose a fair plain question.

Mr. *Freke.* Did you discourse with your sister at all, after Mr. Braddon had been at your house?

W. Edwards. Yes, I had been at school, and when I came home, they said that a gentleman that came from the earl of Essex's brother, had been to inquire of the truth of the report I had raised.

Mr. *Freke.* What did your sister say to you?

W. Edwards. That was all.

Sol. Gen. Did she name the gentleman, and did you see him afterwards?

W. Edwards. Yes.

Sol. Gen. Who was it?

W. Edwards. That gentleman, Mr. Braddon.

Jury. My lord, we don't hear a word he says.

L. C. J. He says he had been at school, and when he came home, they told him a gentleman came from the earl's brother, to inquire of the truth of what he had reported: It was asked him who the gentleman was, and he says, it was that gentleman, Mr. Braddon.

Mr. *Thompson.* Before such time as Mr. Braddon came to you, what did you tell your father about this razor, and when?

W. Edwards. Sir, I told him the king and duke of York were at the Tower, and while I was there, I said, I saw a hand cast out a bloody razor, and a maid come out and take it up, and go in again.

Mr. *Thompson.* Did you see any such thing as a bloody razor cast out?

W. Edwards. No.

L. C. J. What a dust has such a trivial report made in the world! Admit the boy had said any such thing, what an age do we live in, that the report of every child shall blow us up after this rate? It would make a body tremble to think what sort of people we live among:

To what an heat does zeal transport some people, beyond all reason and sobriety? If such a little boy had said so, it is not an half-penny matter, but presently all the government is to be libelled for a boy, which, whether he speaks true or false, is of no great weight, and he swears it is all false.

Sol. Gen. My lord, we shall next call Dr. Hawkins's son of the Tower. Where is Thomas Hawkins? [Who was sworn.]

Att. Gen. My lord, agreeable to what the boy has now said, to shew you that what Mr. Braddon got him to sign was all false, here is the young man that truanted with him the same morning, that was with him all the time, the whole morning, that says, there was no such thing, and he saw no such thing; and how could it enter into the boy's head such a malicious lie, if it had not been dictated? Pray Mr. Hawkins, will you acquaint my lord, and the jury, whether you played truant that morning with this other boy, and where you were?

L. C. J. Ay, tell the truth in God's name, young man, be it one way or the other, let the truth come out.

Hawkins. In the morning, Sir, I met with him at the Tower, going round with the king, and we walked round the Tower as long as the king walked, and then the king going into the Constable's house, we and some more boys were playing——

L. C. J. Prithee speak out, as though thou wert at play at chuck-farthing.

Hawkins. After we had been at play, I went home, and after I had been there a little while, news was brought to my father that the earl of Essex had killed himself. My father went down, and I followed him, and after I had been there a little while, William Edwards came home, and there we stood looking up at the window an hour or two at least, and after we had tarried there a great while, I went out of the Tower gate a little after eleven.

Att. Gen. Was there no razor thrown out of the window?

Hawkins. No, there was no razor thrown out.

L. C. J. Didst not thou see a razor thrown out of the window and a maid come and take it up?

Hawkins. No, there was no such thing.

L. C. J. Were you there before Edwards came?— *Hawkins.* Yes.

L. C. J. And you went out with him?

Hawkins. Yes.

L. C. J. Did you and Edwards go away together? - *Hawkins.* Yes.

Mr. *Thompson.* Did he tell you of any such thing?—*Hawkins.* No.

Sol. Gen. What time of the day was it that you went out of the Tower?

Hawkins. Almost eleven o'clock.

Mr. *Wallop.* The boy does say, he did tell his father and mother, and all the family of it. And it is plain by the father, that it was known in the family by ten of the clock.

Sol. Gen. Was this young man with you, all the time that you was there, Edwards?

W. Edwards. Yes.

Att. Gen. Did not you tell your father of this story when you came from the Tower?

W. Edwards. Yes.

Att. Gen. And that was the same time you came out of the Tower with Hawkins?

W. Edwards. Yes.

Att. Gen. And you, Hawkins, was this young man with you all the time you were at my lord Essex's window?

Hawkins. He came thither while I stood there.

Att. Gen. My lord, this is but the beginning of our evidence, your lordship sees what a fine case it is, and how all this noise and bustle has come to be made in the world. The rumour did first arise in a fanatic family, and was propagated by that party.

Mr. *Jones.* Ay, it is easily known whence it came.

L. C. J. Gentlemen, pray will you go on with your evidence, and make no descants.

Mr. *Freke.* You, Hawkins, when you came from your father's house, did you find that boy in Tower?

Hawkins. Yes, Sir, a going round with the king.

L. C. J. That was before this thing happened.

Mr. *Freke.* Were you with him all the while he was in the Tower?

Hawkins. Just before my lord Essex cut his throat I went home.

Mr. *Freke.* Were you with him all the time or no? And how long were you with him?

Hawkins. I went with him round the Tower with the king. And after we were at play, and then I went home, and then when I had been at home a little time, the rumour and noise came, that the earl of Essex had killed himself; so I went with my father, and stood before the window, and I tarried there a while before he came home, and I stayed with him looking at the window a great while, and we went out of the Tower together.

Mr. *Freke.* You little boy, Edwards, was this Mr. Hawkins with you all the time that you were in the Tower?

W. Edwards. Yes, but only a little while that I was at the Mills.

Att. Gen. My lord, we had not laid so much weight upon Mr. Braddon for this matter, but that he could not be quiet, but must inform the king of it, and this matter was all examined before the king, the boy was sent for, and before his face the boy declared it was a lie. And after he knew this, and after the boy had twice in the presence of the king denied it, yet notwithstanding all this, then was the project between him and Speke. We shall first prove the examination of this matter before the Council, and how he was acquainted with it. Pray call Mr. Blathwaite and Mr. Mountstevens.

Mr. *Blathwaite* was sworn.

Att. Gen. Pray Mr. Blathwaite will you give an account whether you were present at the Council, when Mr. Braddon brought this information, and how the matter was examined there, and what was done.

Mr. *Blathwaite.* My lord, it was on the 20th of July, that Mr. Braddon came to Whitehall, he may remember I was there, for he could not but see me attending on the king. This little boy was brought before his majesty, and was asked what information he had given Mr. Braddon? And whether the matter of the information was true? The boy said it was a lie, and that upon his faith it was not true. Mr. Braddon knew all this, for he was called in and informed of it; and I believe Mr. Braddon will remember, that he heard the boy deny it. The whole examination could not but shew that it was an invention of his, as he said it was, to excuse himself for having played truant that day, and that because he was afraid to go home he invented that lie. After this Mr. Braddon, as it appears, did nevertheless pursue this business.

L. C. J. Pray only tell what you know of your own knowledge, both before and after.

Mr. *Blathwaite.* I know, my lord, that Mr. Braddon (having been in the country) came afterwards before the king, and was again examined upon this matter, by which it appeared, that he did continue in his pursuit, though he was always informed of the denial the boy made, and that it was understood to be a lie by the whole family of the Edwards's, as well as from the denial of the little boy; for they did confess, that the boy used to tell lies, and one of the sisters said he had denied it at first, but afterwards was brought to say it. And if I remember right, the words of one of the sisters were, "Braddon compelled the boy to sign it." Those are the words in the minutes that I took at the examination; therefore I believe it was so, that the boy had denied before to sign it. But this I only mention as what the sister said.

L. C. J. Have you any more questions to ask Mr. Blathwaite, gentlemen.

Mr. *North.* Because we will not trouble Mr. Blathwaite to call him again, pray produce the letter.

Att. Gen. Pray, Sir, will you look upon that letter, and tell the court what you know of it, and whose hand it is.

Mr. *Blathwaite.* My lord, This is a letter that was produced before the king, when Mr. Speke attended there. It was then put into my hands; and I do well remember, and likewise I have written upon it, that Mr. Speke owned it to be his letter.

L. C. J. Did he own it to be his letter, Sir?

Mr. *Blathwaite.* Yes, he did own it to be his letter.

Att. Gen. That is all we have to trouble you with at present, Sir: We will now call Mr. Monstevens, [Who standing up by the Crier, was sworn.] And we call him to prove, That Mr. Braddon had notice the boy had disowned this matter.

Sol. Gen. You hear the question, Sir, pray acquaint my lord and the jury, what you know of this boy's examination before the council, and this gentleman's having notice the boy disowned the thing.

Mr. *Monstevens.* My lord, About 5 or 6 days after my lord of Essex had murdered himself in the Tower, I saw Mr. Braddon at the secretary's lodgings, my lord Sunderland's lodgings at Whitehall, with a young woman, and a boy about 12 or 13 years old. The boy was just now in court, I saw him there. He came to me, and told me, he had earnest business to speak with my lord Sunderland, That he came from sir Henry Capell, and he told me, he came with an information that the boy had given relating to the earl of Essex's death. (The information I believe is in court.) He gave me the information, and I read it, and I remember there was something in the information of a razor thrown out of a window, a bloody razor thrown out of my lord Essex's window; and after I had read the information, I told Mr. Braddon, I wonder sir Henry Capell had not appeared himself in a matter of that moment, wherein the reputation of his family was so much concerned; and I took the liberty to tell him, That I believed if sir Henry Capell had thought that to be true, that was contained in that paper, he would doubtless have come to my lord Sunderland himself. Thereupon he told me, that sir Henry Capell had not been well, and did not stir abroad. Then I told Mr. Braddon again, as I very well remember, That I was confident he had been abroad lately, and had been to wait upon the king, since the death of my lord of Essex. Then, my lord, he had little or nothing to say to that; but he said, what he did he was obliged to do in conscience, and out of the duty he owed to the memory of my lord of Essex. Upon that, my lord Sunderland came by, and I went with him to my lord Sunderland, and he gave him that paper, as I suppose, which I read, and my lord Sunderland took the information, and afterwards Mr. Braddon was committed in custody, and then the thing was brought before the king, and the lords of the council, which Mr. Blathwaite has given you an account of.

Att. Gen. My lord, I pray that a word of the Information may be read, we will first prove the information taken by him, and then call sir Henry Capell, who will prove that he never had any order from him, as he said he had, but it was only his own busy inclinations.

Cl. of Cr. This is subscribed, "William "Edwards."

L. C. J. Call the boy in again.

Mr. *Braddon.* May I ask Mr. Monstevens a question, my lord?

L. C. J. Ay, ask him what you will.

Mr. *Braddon.* Sir, Did not I come to you the Thursday evening, and waited at the dutchess of Portsmouth's lodgings, before I brought the boy and the girl to Whitehall?

Monstevens. No, I did not see you there.

Braddon. You are positive in that, Sir?

Monstevens. Yes, I will take my oath again of it, if you will.

Braddon. Then I will prove I was, and that I saw you at ten of the clock that morning.

Monstevens. I remember, my lord, very well, That I was surprised to see him at the lodgings at Whitehall. I never saw him, to the best of my remembrance, but once in my life.

Braddon. What time was it, pray, you first saw me?

Monstevens. It was in the afternoon, as I remember.

L. C. J. Hark you, young man, do you know my lord Gerard?—*W. Edwards.* Yes.

L. C. J. Which lord Gerard do you know?

W. Edwards. My lord Brandon Gerard.

L. C. J. How came you to know him?

W. Edwards. By sight I know him.

L. C. J. Do you know where he lodged in the Tower?—*W. Edwards.* Yes.

L. C. J. Where?

W. Edwards. At one Mr. Sam's.

L. C. J. Was you ever in his lodging?

W. Edwards. No.

L. C. J. Never at all?—*W. Edwards.* No.

L. C. J. Did you ever tell any body you were in my lord Brandon Gerard's lodgings?

W. Edwards. Never in my life.

L. C. J. Did you never tell Braddon, that you went to see his lodgings?

W. Edwards. Into the house I never went.

L. C. J. Did you never tell Braddon, That you went to see my lord Brandon Gerard's lodgings? Never in your life?

W. Edwards. No, Sir.

L. C. J. Now read it.

Cl. of Cr. [Reads.]——'The Information of 'William Edwards, second son to Thomas 'Edwards, of the parish of All-hallows Barkin, 'London, taken the 18th day of July, in the '35th year of the reign of our sovereign lord 'king Charles 2, anno 1683, says: That this 'informant on Friday the 13th of this instant 'July, as he was going to school, with his 'brother Edward, he heard that his majesty 'and his royal highness the duke of York, 'were going to the Tower. Whereupon this 'informant left his brother, and went to the 'Tower to see his majesty, and his royal high-'ness. And when this informant had seen his 'majesty and his royal highness, this informant 'about nine of the clock in the morning of the 'same day, went to see my lord Brandon Ger-'ard's lodgings; and as this informant was 'standing almost over against my lord Gerard's 'lodgings, between the lord Gerard's and the 'late lord of Essex's lodgings, this informant 'saw a hand cast out a bloody razor out of the 'said earl of Essex's lodgings. And this in-'formant was going to take up the said razor, 'which he saw on the ground to be bloody; 'but before this informant came to the razor, 'there came a maid running out of captain 'Hawley's house, where the said lord of Es-'sex lodged, and took up the said razor, which 'she carried into the said captain Hawley's 'house. And this informant believes that it 'was the said maid, who he first heard cry out 'murder. And this informant further saith, 'That he heard the said maid say to some 'which were about the door, after the murder 'was cried, That she did hear the said lord of 'Essex to groan three times that morning. The 'father, three sisters, and brother will swear, 'That the said William Edwards did declare the 'substance of this Information to them on 'Friday the 13th instant, and never in the least 'denied it till Tuesday after, when being chid 'and threatened by the eldest sister, he did 'deny it; but soon after confessed it, and 'signed it in the presence of five or six wit-'nesses.'

Just. Withins. Thus you see, he persuaded him to tell a fine story of going to see my lord Brandon Gerard's lodgings, but the boy never told any such thing.

L. C. J. No, he never told him a word of it, he swears.

Att. Gen. My lord, Your lordship has heard from Mr. Monstevens, That this gentleman, Mr. Braddon, made use of the name of an honourable person, sir Henry Capell, and so at the secretary's and at Edwards's house made use of the name of my lady Essex. We shall now call sir Henry Capell. [Who was sworn.] Sir Henry Capell, Will you please to give an account, whether ever you employed this gentleman, Mr. Braddon, about any such business as he has here undertaken?

Sir H. Capell. I hope you will give me as short a dispatch as you can, Sir, for it is very uneasy for me to be here in this crowd.

Sol. Gen. We give you some trouble, sir Henry, but indeed it is not we, but this gentleman, that has been pleased to use your name, has necessitated it.

Att. Gen. We ask you a short question, Whether you employed Mr. Braddon to go to Mr. Edwards's house, or to the secretary's, or any where else to prosecute this matter of your brother's death.

Sir *H. Capell.* My lord, I know very little of Mr. Braddon. He was to speak with me twice. The first time he took me in very great disorder, both as to the circumstance of time and place, which are so tender with me, that truly I cannot express, nor do I very well know what I did say, or what he said to me; but the second time he came to me, I do very well remember what I did say. And that which I did say the second time is the most material thing I have to say in the matter. He came to me and spake of such a business as the court is well apprized of already, (I hope you will pardon me, if I do not repeat it,) I made answer to him, Mr. Braddon, I am under great grief and under a great burden of business in my private family, whatsoever you have to say in the matter, I desire you would go to a secretary of state and acquaint him with it. This is the most material thing that was said that I remember.

Att. Gen. But you never employed him to go about to prosecute any such thing?

Just. *Withens.* Sir Henry, Pray answer me, did you desire him to go to Edwards's house and ask him any questions about it?

Sir *H. Capell.* I know nothing of Edwards, nor his house at all.

Braddon. Sir Henry Capell, Will you please to let me ask you one question? Do you not remember I came to Essex-house on the Monday night, and that I came and told you of such a report, and that I had not been with the father of the boy as yet, but if you would then send one with me I would go, and in his presence examine the boy, and you, Sir, promised me that you would; and whether you did not appoint me to tarry at such a place, where you promised to send one to go along with me?

Sir *H. Capell.* My lord, I have a gross idea of that which he speaks of concerning his having one to meet him, and that I told him such an one should meet him, and the person did desire to be excused, and I did excuse him, and so he did not go; upon which this gentleman, Mr. Braddon, came to me a second time, which was after dinner, and I directed him to go to a secretary of state and acquaint him with what he had to say in the business.

Braddon. Did not you promise, Sir, to send one to me to go with me, and desired me to meet at such a place?

Sir *H. Capell.* I remember no more but what I have said.

Braddon. Upon the oath you have taken, sir Henry Capell, I desire you would recollect your memory, whether you did not promise me in the morning to meet at such a place, and was not I twice with you that day?

Sir *H. Capell.* Sir, I know no more.

Just. *Withins.* Do you think sir Henry Capell would forswear himself, Mr. Braddon?

Braddon. My lord, I only desire him to recollect his memory.

Sir *H. Capell.* Only I do farther remember, he seemed to be very willing to go to the secretary of state.

Att. Gen. And if he had acquiesced there he had done very well, and there had been no farther trouble.

Mr. *Jones.* But that was not the way he intended, that would not do his work.

Sol. Gen. Pray, Mr. Blathwaite, do you give my lord and the jury an account whether this information was ever carried before any justice of peace in order to have it sworn before him, and the circumstance of it.

Mr. *Blathwaite.* My lord, I do very well remember, when this information was before the king, and was shewed to Mr. Braddon, he there confessed, that he had gone about to find some justice of peace to take it upon oath. He named sir Robert Clayton, and sir John Lawrence. And I do very well remember, and it is upon my minutes, That he confessed that sir Robert Clayton, being asked by him to take the information in private, alone without company being by, sir Robert refused to take it, unless he might take it more publicly, and sir Robert refusing to take it alone, in private, he would not let him to take it at all, but went away with it. I remember this for sir Robert, and it may be Mr. Braddon may remember the same of sir John Lawrence; but I cannot tell that.

Att. Gen. My lord, now we are come to the 20th of July, when this business was heard before his majesty, and the boy declared it was a lie, and then he had full notice it was a lie. But after this Mr. Speke and he consult together, and he must be sent as an emissary into the country to pick up informations and evidences, and with this, and some other informations in his pocket, to possess the people, that the government had murdered my lord of Essex. And he must be sent I know not how far, as if the further he went from London the better intelligence he was like to have of a thing done at the Tower. The justice of peace that took him was summoned, but is since dead. But we will call the persons that were present when he was taken, where is Mr. Beech? [He was sworn.] Mr. Beech, Will you acquaint the court and the jury with the manner of apprehending this gentleman, and what papers were found about him?

Mr. *Beech.* My lord, I was present when Mr. Braddon was apprehended in Wiltshire, and several papers were found upon him, and upon examination he was committed to the county gaol, and from thence removed by Habeas Corpus hither up to London. I have copies of all the papers that were taken about him, which I examined with the originals. The one was a copy of a letter sent by one Speke to sir Robert Atkins, and there were other papers in the nature of Informations; another was a letter to one Cumpten, postmaster at Frome. Mr. Braddon upon his examination said, his business was to inquire after the murder of the earl of Essex, and that one Mr. Burgis had sent him a letter to this purpose, That it was reported at Frome that very day the earl of Essex cut his own throat, that he had so done; the news of which could not so soon come down thither.

Att. Gen. Pray speak out, Sir, Tell us what his business he said was, and as to the letters he had about him, tell us what he said?

Mr. *Beech.* He told me, that he had a letter from one Mr. Burgis of Marlborough, to go to one Cumpten at Frome, who is postmaster there, to inquire about a report, that it was said was reported in Frome, the 13th day of July, the same day the earl of Essex murdered himself, that he was murdered. Mr. Braddon had that letter about him. I went afterwards to that Cumpten at Frome, he said, he never heard any thing of it, or that there was any noise of the earl of Essex's murder, until the Sunday following, which was two or three days after. From thence I went to my lord Weymouth, a person of quality that lives near Frome, and acquainted his lordship with

it, and he then, said that he had an account on the Sunday of my lord of Essex's murder, and he believed that was one of the first letters of it that was in the country.

Sol. Gen. Are these the papers you found about him, Sir?

Mr. *Beech.* I examined these copies with the originals, and they were true copies.

Att. Gen. Well, put them in.

Mr. *Beech.* Truly, Mr. Braddon gave a very ill account of his journey to those that did examine him.

Att. Gen. Pray look upon those papers that are the originals.

Mr. *Beech.* One colonel Airs was the justice of peace, before whom Mr. Braddon was examined, and by whom he was committed: he is since dead, but I do believe this was the original letter that was taken about Mr. Braddon.

L. C. J. Do you believe that was the original?

Mr. *Beech.* I do, I have a true copy of it.

Att. Gen. Besides, We will prove it otherwise to be Mr. Speke's hand. It was proved by Mr. Blathwaite that Mr. Speke upon his examination did own it; what say you, Mr. Blathwaite?

Mr. *Blathwaite.* He did own it, and said in these words, as I remember, he believed it to be his hand.

Att. Gen. What, that paper?

Mr. *Blathwaite.* Yes, and I have put my hand upon it, that it was owned by him.

L. C. J. Read it.

Cl. of Cr. This is subscribed by Hugh Speke, and dated London, Lincoln's Inn, August 15th 1683, Wednesday night 10 o'clock, and directed, 'For the ever honoured sir 'Robert Atkyns, knight of the Bath, at his 'house at Netherswell, near Stow on the Wold 'in Gloucestershire.'

'Honoured Sir;

'The bearer hereof is one Mr. Braddon, a 'very honest gentleman, whose father has at 'least 800*l.* per ann. in Cornwall; it seems it is 'his fate to be the only person that follows, 'and prosecutes the murder of the earl of 'Essex, and he has made a very considerable 'discovery already of it, notwithstanding the 'hard stream he rows against, as things stand 'and are carried on at present. But indeed I 'think it could never have fallen on so fit a man, 'for he has been a very hard student, and is a 'person of a very good reputation, life and 'conversation, and has a great deal of prudence, and has as much courage as any one 'living whatsoever. He went away on a 'sudden hence post towards Marlborough to 'make some farther discovery, and what he 'has discovered he will give you a full account, 'and of all the transactions hitherto about it. 'I lent him my man to go with him for fear 'he should come to any mischief, for most here 'fear he will either be stabbed or knocked on 'the head, if he do not take great care of himself; seeing he came into these parts, I 'thought it not amiss to go and advise with you 'how he had best to proceed in it, and I did 'charge him not to let any body know who he 'was, that it might not be known that he had 'been with you; for I would not for the world 'that you should come to any prejudice in the 'least for your kindness towards us. For we 'labour under many difficulties as the tide 'runs at present.

'Pray call Mr. Braddon by the name of 'Johnson when he is with you; I have given 'him the same item. We hope we can bring 'on the earl of Essex's murder on the stage, 'before they can any of those in the Tower to 'a trial. He being in great haste, I have not 'time to write more, but to assure that Mr. 'Braddon is a person of that integrity and 'courage that no body needs fear to trust him. 'I was very willing that he should take your 'advice in this case which is of so great a 'moment, seeing he came within 20 or 30 'miles or thereabouts of your house. He will 'give you a full and clear relation of every 'thing in that affair, and how hard they have 'been upon him. Sir Henry Capell told him, 'that it was a thing too great for him, &c. 'All which Mr. Braddon (that you are to call 'Johnson whilst he is with you at your house) 'will give you a true relation of. Mr. Braddon 'hath been at a great trouble and charge 'already about it; I know few that would 'have ventured to have undertaken this affair 'besides himself, as times go. I received 'yours this day, with the great pains you 'took, and the letter to the lady Russell, which 'finding unsealed, I sealed, without looking 'into it, and carried it myself. She returns you 'ten thousand thanks, and says, she knows not 'what return to make you for your most extraordinary kindness. I have not time to write 'any more at present, by reason that Mr. Braddon, alias Johnson, stays only for this my letter. I am, Sir, your most obliged friend 'and most humble servant, HUGH SPEKE.'

'I am writing a letter to send to you by the 'carrier.'

Att. Gen. This gentleman brings in Mr. Speke to be the author of all this contrivance. But we shall prove to you, that at the same time this letter was taken about him, this gentleman had others that were likewise taken. These examinations, which I desire may be likewise read.

Mr. ——. My lord, I came lately from sir Robert Atkyns, he is an utter stranger to all this, he is now in the country, and knows nothing of it.

L. C. J. If they will use his name, I can't help it.

Mr. ——. My lord, I would not have any reflection upon him, for he knows nothing at all of this matter.

Sol. Gen. The letter was never received by sir R. Atkyns, but taken before it came to him.

Att. Gen. All the matter is, it is an unhappy thing to be thought well of by such sort of people.

L. C. J. I see nothing of sir Robert Atkyns in the case, but only his name is used, and notice is taken of the great obligations some people have to him, for his great kindness to his friends.

Cl. of Cr. Here is an information.

L. C. J. Was this found about him too?

Mr. *Beech.* Yes, I believe that is the very paper, I have no copy of that paper, but I well remember the contents of it.

Att. Gen. Did you sign it or mark it?

L. C. J. He may believe it to be without signing.

Mr. *Beech.* I presume Mr. Braddon will own it.

Cl. of Cr. The Information of Mrs. Edwards, wife to Thomas Edwards, saith, 'That about '10 o'clock in the morning on Friday the '13th of this instant July, this informant's 'youngest son William Edwards, aged about '13 years, came trembling to this informant, 'and in great amazement and horror told 'this informant, that the lord Essex had cut his 'throat in the Tower, and further said, Thas 'he the said William Edwards in the morning 'about nine o'clock, did see a hand cast out 'a razor out of the said lord of Essex's lodg-'ing window, which razor he saw on the 'ground to be bloody. And the said William 'Edwards was going to take up the said razor, 'but before he came to it, there came a maid 'running out of captain Hawley's house, 'where the said earl of Essex lodged, and 'took up the razor, which she the said maid 'forthwith carried into the said captain Haw-'ley's house, and soon after he the said Wil-'liam Edwards heard her, as he the said Wil-'liam Edwards did believe, cry out murder. 'And this informant further saith, That the 'substance of which the said William Edwards 'hath sworn in this information, he the said 'William Edwards on Friday last did declare 'to this informant and her whole family, 'several times attesting it to be true, and several 'times since.'

Cl. of Cr. Here is the Information of William Edwards second son of Thomas Edwards.

Att. Gen. That is the same with what was read already.

L. C. J. Ay, that is the boy's Information.

Cl. of Cr. Here is another, it is dated August the 8th, 1683. The Information of Jane Lodeman, aged about 13 years, did in the presence of these, whose names are here underwritten, declare as followeth, 'That the said 'Jane Lodeman was in the Tower on Friday 'morning, the 13th of July last, and standing 'almost over-against the late earl of Essex's 'lodging window, she saw a hand cast out 'a razor out of my lord's window, and imme-'diately upon that she heard shrieks, and that 'there was a soldier by my lord's door, which 'cried out to those within the house, that some-'body should come and take up a razor which 'was thrown out of the window, whereupon 'there came a maid with a white hood out of 'the house, but who took up the razor she 'cannot tell.'

This is subscribed JOHN BOOM, WM. SMITH.

Cl. of Cr. Here is another paper, August the 8th, 1683. Mr. William Glasbrooke does declare, That one Jane Lodeman, aged about 13 years, inhabiting in the same house where he the said William Glasbrooke lodged, did on Friday the 13th of July last past, between the hours of 10 and 11 in the morning, in the presence and hearing of him the said William Glasbrooke declare to her aunt, 'That the earl of Essex 'had cut his throat, upon which her aunt was 'very angry with her, whereupon she the said 'girl did declare, that she was sure of it, for 'she saw him throw the razor out of the 'window, and that the razor was bloody, and 'that she heard two groans or shrieks (which 'of the two words she used, he the said Wil-'liam Glasbrooke is not certain); of this he the 'said William Glasbrooke is ready to make 'oath.

'This is subscribed WM. GLASBROOKE, MARGARET SMITH.'

Att. Gen He carried his stuff about him, it seems, wherever he went.

L. C. J. It is stuff indeed. Good God, what an age do we live in!

Att. Gen. It is not taken upon oath before any magistrate, but cooked up to amuse the country, as if they were formal Informations. Here is another letter, Mr. Beech, was this letter found about him?

Mr. *Beech.* Yes, this letter was found about him.

Att. Gen. It is from one Burgis, a man of the same kidney.

Cl. of Cr. This is directed for Mr. Cumpen, at the Dolphin at Frome, and it is subscribed Jeremiah Burgis, and dated Marlb. Oct. 21.

'Mr. Cumpen;

'My kind love to you. These are to desire 'you to call to mind, that I was in Frome the '6th of July, being Friday, where I heard the 'report that the earl of Essex had cut his own 'throat; I would desire you to inquire into it, 'to know who first reported it, and give this 'gentleman the truth of it. And in so doing 'you will oblige me, who am your friend,

'JEREMIAH BURGIS.'

Mr. *Beech.* Under favour, my lord, this letter talks of a report that was the 13th day, the very day the earl of Essex murdered himself, I went directly to Frome and spake with this Cumpen, and he told me, he did not speak with Burgis nor see him, nor was there any such report before the Sunday morning. From thence I went to my lord Weymouth's, as I told you.

Att. Gen. My lord, we have gone through our evidence for the present to shew how this man has endeavoured to spread this matter to the scandal of the government. We shall end here at present to see how he has improved his confidence, by what defence he will make to all this proof. Afterwards, if there be occa-

sion, we shall give an account of the earl's death, how he murdered himself. And for that we have a cloud of witnesses, though this gentleman has taken upon him so much confidence as to contest it.

L. C. J. That would be very fit, Mr. Attorney, because they have raised a doubt in some people's mind about it.

Att. Gen. I thought it best to reserve it till after I see what defence he will make.

L. C. J. Take your time.

Mr. *Wallop.* May it please your lordship, and you gentlemen of the jury, I am of counsel for Mr. Braddon and Mr. Speke, the defendants here. You see what the issue is before you, Mr. Speke and Mr. Braddon, they are in the Information charged, That they did conspire together to make the people believe, That whereas the earl of Essex murdered himself, and so it was found by the inquisition, yet they would have the people believe, that that inquisition was taken unduly, and that they did conspire to procure false witnesses to make these things out. Now, gentlemen, the only point that you are to enquire of, is this, Whether these two gentlemen did maliciously, factiously, and seditiously set these things on foot. This report that the earl was murdered, or whether there were such intimations offered to them accidentally and casually, without officiousnesss, or any of their own seeking that might induce a good man, or a wise man to follow the business upon such information given. For our parts that are for the defendants, we say this for our clients, we are not so much to make any men guilty of this murder, that is not our business, but to prove our own innocency and fair dealing in this matter. Now, gentlemen, if these two persons had no inducement to lead them on to this, but did it of their own heads, that is criminal in them; but if they had that which might induce a wise and good man, though they were much mistaken, yet they are not to be found guilty of this offence that is charged on them. I shall leave it, gentlemen, to you, who I question not have observed the evidence that has been given, and whose proper work it is to make your judgment upon it. But in our defence, the steps we go are these, and we desire you would please to observe them. First, we say, That the report of this murder was the day before, two or three days before, and that very day, so many miles distant from London, that hearing of such a report, we might very easily be induced to make some inquiry after it; and of this four instances we shall give in the course of our evidence, that this was a great many miles off London talked of at the day, and immediately after the day, before the news could reach those places, after the fact committed. Then we shall proceed to those passages concerning the boy, and produce evidence to set forth the true state of that matter, That this boy, as he says himself, did tell the family this story, that very day that my lord murdered himself, immediately upon his coming home. Now this original story is impossible to be contrived by Mr. Braddon, be it true or be it false. Then Mr. Braddon coming into Essex, to Mr. Evans's house at Wansted, there, what was said by the boy was spoken of. Then Mr. Braddon finding this Information of the boy which he had given merely of himself and which contradicted the inquisition, and put him upon this inquiry. Now how far this intimation has weight, and may be an inducement to a good and wise man, as I say, that we must leave to you. But besides that, there is a girl, a stranger to the boy, that at the same time, upon the matter, and to this same effect and substance, delivered such an evidence, as might very well serve to confirm us in our inquiry, and this is the course of our evidence, in the substance of it. And we shall apply ourselves to your lordship and the jury after the evidence given, and make our observations upon it, and submit it to you, gentlemen.

Mr. *Williams.* Will your lordship please to spare me one word, that is an objection that we would make from the record itself. The Information that does recite, That the earl of Essex was imprisoned in the Tower, and during his imprisonment there cut his own throat, and became Felo de se. And that there was an inquisition taken before such an one, before Edward Farnham, coroner of the liberty of the Tower: My lord, I was not here when the inquisition was read, if I had I should have made the objection then, but this is that I say, if we can falsify that part of the record, if there be a mistake there, that is, if Farnham was not coroner, then they fail in their proof, and we must be found Not Guilty, for so it is in the Information.

L. C. J. It is said to be before him as coroner of the liberty.

Mr. *Williams.* Yes, my lord, they recite that he is coroner, and that the inquisition was taken before him as coroner, and Mr. Braddon knowing of it, did thus and thus.

L. C. J. Why, is he not coroner?

Mr. *Williams.* My lord, I desire the inquisition may be looked into, I cannot go to contradict the inquisition, but my instructions only are that he is deputy coroner, and if it be so they are mistaken in their information.

Cl. of Cr. It is 'Coram Edvardo Farnham 'Coronatore.'

Mr. *Williams.* Then we cannot help it. But there are these things that we say to it, one part of the information is, That we should go about to persuade the people, that this inquisition was not duly taken; another part is, That we did procure false witnesses to prove it; now what proof is offered as to the matter of persuading the people, I must submit to you, whether it be such as comes up to the charge in the information. There is some kind of proof, but what it is, you see. Then for the other matter, which is the procuring of false witnesses, that, under favour, I think I may affirm, that there is no proof at all of, that

Mr. Braddon or Mr. Speke did procure false witnesses. Gentlemen, we shall endeavour to acquit ourselves of all, if we cannot of all, yet of part, especially that part which seems to be the most criminal. And I must needs say, I have not heard any proof of procuring false witnesses, by either of the defendants. Then there is a third thing charged, and indeed in the evidence there is something that looks towards it, That he should go about by papers, and otherwise to publish it, that he was a person employed to prosecute the Murder of the earl of Essex. Now as to this matter, all I shall say for Mr. Braddon is this, If he have done something more, it may be by a transport of zeal, than became him, that must be submitted how far it is criminal. If he did what did not become a mighty wise and discreet man; yet if he did what became a rational man of ordinary capacity to do, if he had this information, and so many other informations, and he did search innocently a little into it, if he did not do it seditiously and factiously with an ill mind, we hope there is no such great harm done. And indeed, gentlemen, his mind is to be tried in this matter. And it is an hard matter to try a man's mind, *quo animo,* a man did such an action; that he did it there is some sort of evidence, but if he did it not out of an ill principle, and with an evil intention, then, under favour, we take it he is not guilty of this Information. And we shall endeavour to make it out thus, This gentleman hearing of this report of the boy, makes his application first to sir Henry Capell, who was a person well known, to be nearly related to this unfortunate lord, the earl of Essex, and he tells him what information he had received. Sir Henry Capell puts him into an excellent course, and desires him to go and inform the secretary of state, and he did so, and if he had gone only this way, all that he had done had been innocent. Then the matter is only this; He has gone a little out of the way, and has taken some informations and examinations in writing: Why, though he has gone a step or two awry, yet if it was with a design to prepare the matter the better for the secretary, by laying these papers before him, we hope there is no crime; if we did it not seditiously, but only with an intention, That Mr. Secretary might receive a more clear and full information; I hope the jury will acquit us.

L. C. J. You say well. Come, prove your matter.

Mr. *Thompson.* Call Mr. Fielder, and Mrs. Mewx, and Mr. Lewes.

Lewes appeared.

Crier. Lay your hand on the book.

Lewes. My lord, I desire my charges may be paid, before I swear.

L. C. J. Pr'ythee, what have I to do with thy charges? I won't make bargains between you. If you have any evidence to give, and will give it, do; if not let it alone.

Lewes. My lord, I shall not give any evidence till I have my charges.

L. C. J. Braddon, If you will have your witnesses swear, you must pay them their charges.

Mr. *Braddon.* My lord, I am ready to pay it, I never refused it; but what shall I give him?

L. C. J. Nay, I am not to make bargains between you, agree as you can.

Mr. *Thompson.* My lord, we are willing to do what is reasonable. You, Lewes, What do you demand?

Lewes. He can't give me less than 6*s.* a day.

L. C. J. Why, where dost thou live?

Lewes. At Marlborough.

L. C. J. Why, canst thou earn 6*s.* a day by thy own labour at Marlborough?

Lewes. My lord, I am at 40*s.* or 3*l.* a week charge with my family and servants.

L. C. J. What trade art thou?

Lewes. A stapler.

L. C. J. And does your trade stand still while you are in town?

Lewes. Yes, to be sure it can't go well on.

L. C. J. Well, I say that for you, you value your labour high enough, I know not what your evidence may be; but, Mr. Braddon, you must pay your witness, if you will have him.

Mr. *Braddon.* I will, my lord, very readily. What will you have? I have paid you something already.

Lewes. Give me 20*s.* more then. You can't give me less.

Then Mr. Braddon paid him 20*s.*, and he was sworn.

L. C. J. Well, what do you ask him, Mr. Thompson?

Mr. *Thompson.* We ask him, What report he heard of the earl of Essex's death, and when?

L. C. J. What is your name, friend?

Lewes. Lewes.

L. C. J. Well, what is it you say?

Lewes. My lord, as I was riding up Husband, within 3 or 4 miles of Andover——

Mr. *Wallop.* How many miles is that off of London?—*Lewes.* Fifty-two.

Mr. *Wallop.* Well, go on.

Lewes. Between the hours of 3 and 5, but it is so long ago that I cannot exactly tell the certain time; a man asked me what news I heard in the country, I told him, I heard none. Says he, I hear the earl of Essex has cut his throat: It was upon a Friday in the summer, I forget the day of the month, I can't tell what month it was certainly.

Mr. *Thompson.* What day of the week was it?

Lewes. I remember it was upon a Friday.

Mr. *Thompson.* Can't you tell what month it was?

Lewes. I can't tell what month it was, it was in the summer I know.

Mr. *Braddon.* My lord, I desire to ask him a question.

L. C. J. Do, if you will: Ask him what you will.

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Braddon. Did not you go to Marlborough on the Saturday?

Lewes. I did go to Marlborough the next day, which was Saturday.

Braddon. I desire to know of him, whether he did meet with the news of it there then?

Lewes. My lord, as to that, when I came home, my neighbours asked me if I had heard any news? I told them, says I, I hear the earl of Essex hath cut his throat. Why when did you hear it, say they? I heard it yesterday, said I. Said they, it was done but yesterday, how could you hear it so soon? That is all I have to say, my lord.

Mr. *Williams.* By the best conjecture you can make, was it that very day the earl of Essex cut his throat?

Lewes. I do not know that ever any such man cut his throat, but this I heard, and I tel you the time as well as I can.

Mr. *Williams.* Then pray let us have our money again.

L. C. J. Thou art well paid, I will say that for thee.

Mr. *Williams.* Where is Mr. Fielder? Swear him. [Which was done.] Pray, Sir, what did you hear, and when, of the earl of Essex's death?

Mr. *Fielder.* The Wednesday and the Thursday of the same week that the earl of Essex cut his throat, it was reported in our town of Andover, that he had so done. The women, as they came in and out of the town, talked of it to one another.

L. C. J. What was talked of that Wednesday and Thursday?

Fielder. That my lord of Essex cut his throat in the Tower

Just. *Withins.* What before he had cut his throat?—*Fielder* Yes.

Just. *Withins* That is very strange indeed.

L. C. J. Lord, what a story is here!

Mr. *Williams.* My lord, if you please, I will tell you what use we would make of it——

L. C. J. I know what use you would make of it, the use is just the same, as you make use of all sorts of ridiculous and shamming stories, to set us together by the ears, and rake into all the dunghills that can be, to pick up matter to put us into confusion.

Mr. *Williams* But, my lord, if there was such a report so long before——

L. C. J Mr. Williams, you were here in town at that time, I am sure.

Mr. *Williams.* My lord, I heard it at 11 o'clock that day, that is the soonest I heard it.

L. C. J. What an age do we live in! What stuff is here picked up, on purpose to kindle the fire, and set us all into a flame!

Att. Gen. What day of the month was it, Fielder, upon your oath?

Fielder. I did not mind the day of the month, I can't tell that.

Sol. Gen. How do you know it was that week?

Fielder. Because on the Saturday night that week, we had the certain news of it.

Sol. Gen. You say somebody told you then of it on Saturday?

Fielder. Yes, on Saturday we had certain news of it.

Sol. Gen. Who gave you the certain intelligence?—*Fielder.* Some clothiers.

Mr. *Williams.* Was Gadbury your countryman?

L. C. J. Ay, pr'ythee ask him that, whether Gadbury told it him, or Erra Pater, if you will.

Att. Gen. From what market people was it reported?—*Fielder.* Some women.

Att. Gen. It was only women's stories then?

Fielder. Yes, they talked of it among themselves.

Att. Gen. Was it the forenoon or the afternoon?

Fielder. The Wednesday and Thursday both, it was the common talk of the town all day long.

Just. *Withins.* Name one that spake it to you.

Att. Gen. Ay, name one of any credit if you can.

Fielder. I cannot, it was the women as they came in and out of my shop, and as they went up and down the town.

Mr. *Wallop.* My lord, we leave it with your lordship and the jury. He swears he then heard such a report.

Just. *Withins.* Do you believe this, Mr. Wallop, yourself? You are a man of ingenuity, I appeal to you.

Mr. *Wallop.* I believe that Mr. Braddon in his prosecution of this matter went upon the ground of this report, for he had heard the like evidence was given in my lord Stafford's trial, about the news of sir Edmundbury Godfrey's being killed, before it was known here what was become of him, and that perhaps misled him, if he be misled.

Just. *Withins.* Do you believe that this man can speak truth, when he says it was reported all about their town, for two days before it was done, and yet cannot name one person that spake it?

Fielder. I keep a public shop, and do not take notice of every one that comes in and out, to remember particularly.

Just. *Withins.* You heard it up and down the town you say, surely you might remember somebody.

Mr. *Wallop.* He might hear it, and not take notice of one, but it was the common fame at Andover

Mr. *Williams.* Let it go as it will. Your lordship and the jury hear what he says——

L. C. J. But, under favour, Mr. Williams, it ought not to pass so easily; it is a contrivance to deceive the king's subjects, and shews a design to pick up evidence to deceive the unwary, and fill their heads with fears and jealousies of I know not what.

Mr. *Wallop.* My lord, I would excuse my client from malice as well as ever I can, and therefore we produce these witnesses, to shew what grounds he had for what he did.

Mr. *Williams.* We will next call some women that live near the Tower, that might give him some occasion for his concerning himself, in this business, Jane Lodeman, and Margaret Smith. This voice and rumour in the country made him go into the country, but it shews he was no contriver of the report.

Att. Gen. I would fain know of Fielder, when he told Mr. Braddon of this?

Braddon. My lord, I desire the family of the Edwards may be called.

L. C. J. Name them, Who are they? How can we tell who your witnesses are?

Braddon. Crier call them, Mrs. Edwards and her daughter. Will your lordship give me leave to make my own defence?

L. C. J. Ay, if you will, but then take notice your counsel are discharged from making any defence for you.

Braddon. May it please your lordship, and you gentlemen of the jury, These were the inducements following, that put me upon engaging in this matter——

Att. Gen. Call your witnesses first, and then speak.

Braddon. Mr. Edwards, and Mrs. Edwards. [Who came into court.]

Just. *Withins.* Pray, Mr. Braddon, answer me this one question. What was the matter that encouraged you to proceed after you knew the boy had denied it, and said it was all a lie.

Braddon. I was bound to answer to an Information after I had been examined at the council; I had not otherwise stirred in it again.

L. C. J. Well, What do you ask Edwards?

Braddon. What day was the first day I saw you, and had discourse with you, and what was the discourse I had with you?

Edwards It was the 17th of July.

Braddon. What did you tell me then that your boy reported?

Edwards. I told you what I acquainted the court withal before, that the boy had brought home such a report.

Braddon. Had the boy ever denied it before I saw you?

Edwards. That day you came to speak with me about it, as I was informed by my wife and my daughter, the boy did deny it.

Braddon. Was it before I came, or after I came that he denied it?

Edwards. It was after you came.

Braddon. What were the inducements that made him to deny it?

L. C. J. He tells you himself, because it was false.

Braddon. I desire the elder sister Sarah Edwards may be called.

Mr. *Wallop.* It is apparent the boy did affirm it——.

L. C. J. I thought Mr. Braddon would have made his defence himself, Mr. Wallop, but you will be breaking in upon him with your remarks. Make your remarks by and by, this is a time for evidence.

Mr. *Wallop.* My lord, I only say this, It is apparent the boy did first affirm it, and we shall shew how he came to deny it.

L. C. J. It is not proper for you to make remarks, when you are examining your witnesses; but when you sum up, you may take what notes you will, and reserve them till that time, but do not break in upon the evidence.

Crier. Here is Sarah Edwards now. [Who was sworn.]

Att. Gen. This is not the sister, this is the mother of the boy.

L. C. J. Well what do you ask her?

Braddon. What discourse had you with your boy about ten o'clock that Friday morning I met you?

Mrs. *Edwards.* I had no discourse, but what my child told me.

Braddon. What did your child tell you?

Mrs. *Edwards.* I gave an account to my lord-keeper, he had it in writing, I gave him an account in writing.

Braddon. But you are now called upon your oath, and are to speak the truth, and must give an account to his lordship and the jury upon your oath, what it was the boy told you?

Mrs. *Edwards.* What was it, Sir, he came and told me? Why, the boy told me, Mother, says he, I have been at the Tower, and seen the king's majesty, and his royal highness, and says he, the earl of Essex has cut his throat; and Lord, Mother, says he, and wept. Lord, child, said I, I am afraid you are going to make some excuse to me that I should not beat you, being you have played truant; no, mother, says he, I did not. He continued in this for a little while, and then afterwards did deny it.

Braddon. What did he deny?

Mrs. *Edwards.* What he had said to me.

Braddon. Did he deny that he had been at the Tower? Or that the earl of Essex had cut his throat?

Mrs. *Edwards.* No, he denied what he said he saw.

Braddon. What was that?

Mrs. *Edwards.* He said, he saw an hand out of a window, and a razor fell down, and he went to take it up, and there came out a woman, or a maid, a short fat woman came out, and took it up, and went in again.

Mr. *Wallop.* And he said this crying and weeping you say?

Mrs. *Edwards.* Yes, he did so.

Braddon. Did he deny it before such time as I had been there?

Mrs. *Edwards.* No, you was once at my house before, and spake to my husband, and then you came the same day again.

Braddon. Pray what was the discourse your eldest daughter had with the boy between the time of my first coming, and the time of my second coming?

L. C. J. 'Tis impossible for her to answer any such question, what discourse two other people had.

Att. Gen. Bring the daughter herself, and let her tell.

L. C. J. Hark you, Mrs. Edwards, before you go. The boy denied it, it seems, in two or three days after he had given out such a report?

Mrs. *Edwards.* Yes, my lord, he did.

L. C. J. How came he to deny it?

Mrs. *Edwards.* I will tell you how. When this gentleman came and acquainted my husband with his business, it put us all into a great damp; and my husband said, Now both my boys were gone to school, and says he, after the gentleman was gone, to my daughter Sarah, Do not you say any thing to your brother when he comes in, but let him alone, and we will talk to him. So with that she was grievously affrighted, and so amazed, that as soon as he came in, she said, Prythee, Billy, deal truly, and do not you tell any lie to save your breech, for here has been a gentleman to enquire something about what you said; why, sister, says he, will any thing of harm come? Truly, child, says she, I do not know; and upon that he did deny it.

L. C. J. Did you tell Mr. Braddon, he had denied it?

Mrs. *Edwards.* He was told he had denied it.

L. C. J. Did you tell Mr. Braddon, before the paper was signed, that he did deny it?

Mrs. *Edwards.* Yes, my lord, he knew that before the paper was signed.

Braddon. Mrs. Edwards, did not the boy come to you, and cry out, he should be hang'd, and then did deny it?

Mrs. *Edwards.* Yes, that he did.

Braddon. From whence did he come, that he was in such a fright?

Mrs. *Edwards.* I can't tell that, Sir.

Braddon. Did not your eldest daughter chide him and threaten him?

Mrs. *Edwards.* Yes, she did bid him speak the truth.

Att. Gen. And then he denied it?

Mrs. *Edwards.* Yes.

L. C. J. Ay, says she to him, Billy, do not, to save thy breech, tell a lie, but speak the truth; why then, says he, the truth of it is, there was no such thing.

Braddon. My lord, she says it was after his sister had chid and threatened him.

Sol. Gen. You are a little too fierce upon the woman, Mr. Braddon, you do not observe what she says.

L. C. J. Yes, he is wonderful zealous, flourishing his hands—

Sol. Gen. She says, the daughter did tell the son that he must speak the truth, and not tell a lye to save his breech, for there had been a gentleman to inquire about it; Why, says the boy, will there come any harm of it? I don't know, says his sister; Why then, says he, I tell you the truth, there was no such thing.

L. C. J. Ay, when she engaged him to tell the truth, and not tell a lye to save his breech, then the truth comes out.

Braddon. Pray call Sarah Edwards the daughter. My lord, they told me in the house that she had frighted him into a denial.

L. C. J. Pray, good Sir, how came you to be a justice of peace, and to turn examiner? You live in the Temple, or belong to the Temple, how come you to take examinations here in London, but that some people are so very zealous and officious in matters that concern them not, on purpose to raise a dust?

Then *Sarah Edwards* the younger was sworn.

Braddon. Did not your brother deny what he had said by your means?

L. C. J. Pray, ask a fair question.

Braddon. Mistress, pray tell your knowledge of what the boy declared?

L. C. J. Ay, ay, tell what you know, what your brother said concerning his seeing a razor, and his denying of it afterwards. Tell all from the beginning to the end, and tell truth in God's name, and nothing but the truth. We desire the truth may come out, let it be of which side it will.

Sarah Edwards. My brother came home, and said he had been at the Tower, and that he had seen his majesty and his royal highness, and the earl of Essex had cut his throat, and that he saw an hand fling a razor out of a window, and that a maid, or a woman, came out and took it up, and went in again, and presently after he heard a noise of murder cried; so I knowing he was very apt to tell lies, I did not believe it.

Braddon. Pray, mistress, did you prevail with him to deny it afterwards?

L. C. J. You are so wonderful full of zeal and heat in this matter, you cannot let your own witnesses tell their own story, but you must interrupt them. You have been bred to the law, and you have been before here present, I suppose, at many trials, and what pretence can you have to be more indulged in an extraordinary way of proceeding than others? It is not for the integrity of your conversation, I am sure, that you ought to have it, but only because you have more impudence.

Braddon. My lord, I have nothing of confidence, but what is grounded upon innocence.

L. C. J. I tell you, you are too confident, and pray know where you are, and behave yourself as you ought.

Braddon. My lord, I hope I do no otherwise.

L. C. J. We must give such liberty and toleration because of the extravagance of his confidence, as to let him break in upon all rules and methods. When you behave yourself as you ought to do, the court will indulge you, and give you all just liberty; but don't expect for your zeal sake, and the flinging of your hands, to do what you list. Go on, mistress.

S. Edwards. So, Sir, this Mr. Braddon came on Tuesday following, about one or two of the clock, and asked for my father, and coming, my sister Mary went to the door, and called my father out to him. When my father came to him, he told my father he came from sir Henry Capell, and the countess of Essex, to know the truth of my brother's report. So my

father told him the boy had reported such a thing, but he would not assert the truth of it, for he had been informed by us that the boy was apt to tell lies to excuse his playing truant; so the child was gone to school when Mr. Braddon came, and when he came home from school they went to the child; said I, Billy, will you be sure to tell me the truth of this report; why sister, said he, will any harm come of it? Nay, said I, I do not know, for there has been a gentleman to enquire about it. So then the child denied it.

L. C. J. Did he know this before he made the boy sign the paper?

S. Edwards. Yes. This was on the Tuesday after Mr. Braddon had been first there. And I spake to him, said I, Billy, say nothing but the truth, be sure, and don't tell a lie to save your breech. So, Sir, as soon as ever the child denied it, Mr. Braddon came in again the same day, and coming in found us, my mother and all of us, daunted hearing the boy deny it; but he asked the child and bid him speak the truth, and told him it was a dreadful thing to be liar, and bid him read the 5th of the Acts, telling him he would find there two were struck dead for telling of a lie, and several other such expressions that I cannot remember. Upon Wednesday, about noon, he comes again, and then my brother did own it again, and he writ down what the boy owned, and went away, saying he would go to sir Henry Capell and the countess of Essex. And on Thursday, he comes again and brings a paper written over again, not the same he writ at our house, and then the child set his hand to it. The child was something unwilling, so says he to him, It will be no harm to you, if any danger does come of it, it will come to me and not to you.

L. C. J. The child was unwilling to sign it you say, but by his persuasion?

S. Edwards. Yes, Mr. Braddon told him it would be no harm to him, all the harm would come to himself.

Braddon. When the child had owned to me what he first said, and upon your saying that he denied it, I asked him the reason why he denied it? pray will you tell what answer he made to that question. Pray tell the ruth and nothing but the truth.

S. Edwards. Upon my word, Sir, I can't recollect that.

Braddon. Pray mistress, what answer did he make?

S. Edwards. I have told you what I know, to the best of my remembrance.

Braddon. Did not you hear your brother run to his mother, and cry out, I shall be hanged?—*S. Edwards.* Yes.

Braddon. What was the reason of his crying out so?

S. Edwards. Why, the child had that fear and dread upon his spirits, knowing it was a lie, I suppose, he told.

Braddon. What was the reason of his fear?

L. C. J. She tells you, it was the falsehood of the story.

Mr. Wallop. Mistress, did not you tell him, that his father would be in danger of losing his place?—*S. Edwards.* Yes, Sir, we did.

Mr. Wallop. Did you tell him, the king will hang your father if you do not deny it?

L. C. J. Why have you a mind to have it believed that it was true, then, Mr. Wallop?

Mr. Wallop. My lord, the boy best knows that.

L. C. J. But do you believe that if it had been true, that the king would hang his father, or turn him out of his place if he did not deny it, as though the king would force people to deny the truth?

Mr. Wallop. My lord, I do not say nor believe any such thing.

L. C. J. But your question seems to carry it so.

Mr. Wallop. My lord, I ask the question of her, whether she did not say so to him. I ask questions according to my instructions.

L. C. J. Nay, Mr. Wallop, be as angry as you will, you shall not hector the court out of their understandings. We see plainly enough whither that question tends. You that are gentlemen of the robe, should carry yourselves with greater respect to the government, and while you do so, the court will carry themselves as becomes them to you.

Mr. Wallop. I refer myself to all that hear me, if I attempted any such thing as to hector the court.

L. C. J. Refer yourself to all that hear you, refer yourself to the court; it is a reflection upon the government, I tell you your question is, and you shan't do any such thing while I sit here, by the grace of God, if I can help it.

Mr. Wallop. I am sorry for that, I never intended any such thing, my lord.

L. C. J. Pray behave yourself as you ought, Mr. Wallop, you must not think to huff and swagger here.

Just. Withins. Mr. Braddon, you hear what the reason was of his crying out so. She said he was afraid because he knew he had told a lie.

Mr. Wallop. Pray, mistress, who told him the family would be ruined by it?

Just. Withins. Mr. Wallop, I asked this gentlewoman, whether she did say it, and she said she could not tell.

S. Edwards. Indeed I cannot tell, my lord.

Mrs. Edwards. She did indeed say so, my lord.

Mr. Wallop. Pray let it go, my lord, as it is, what was it she said? Did she speak about turning her father out of his place?

Mrs. Edwards. I cannot say that, but she said, when the boy asked whether there would be any harm by it, she could not tell, but it may be her father and family might be ruined.

L. C. J. And is not this a reflection upon the government, to say the king would ruin any one if they did not tell a lie?

Mr. Wallop. My lord, for a false report he might be ruined, but it seems upon this saying he did deny it.

Just. *Withins*. Was there a word said of his being turned out of his place?

Mrs. *Edwards*. I cannot say there was.

L. C. J. No, not a word, but only Mr. Wallop is so impetuous in the worst of causes.

Mr. *Wallop*. I am in the judgment of the court, whether I do any thing but what becomes an advocate for his client, according to my instructions.

L. C. J. Yes, you are so, and shall know that you are under the correction of the court too.

Mr. *Wallop*. My lord, I know where I am.

L. C. J. Ay, you know well enough, but you would do well to carry yourself as you should do.

Mr. *Wallop*. With humble submission, my lord, I appeal to all that hear me.

L. C. J. Appeal to whom you will, I know the business of the bar is to appeal to the court.

Just. *Withins*. What is the matter with Mr. Wallop, that makes him so earnest in this cause?

L. C. J. There is such an heat in this cause, I wonder whence it should come, I am sure it is not from the honesty of it.

Braddon. Young Mrs. Edwards, if I suffer any thing by reason of the falsity of your testimony, it will return upon you.

S. Edwards. Sir, I do tell you all I know.

Braddon. Then I desire you to answer me this question, whether or no when the boy did own what he first said, and I asked him the reason of his denial whether the falsity of the thing, or fear caused him to deny it, did not he say it was fear through your discouragements and threatenings?

S. Edwards. No, he did not say it, did he, mother?

L. C. J. Why, we are got into a way of appealing and appealing, here is appealing to the people, and appealing to the witness; pray keep to the business, and within the bounds of decency. Before such time as the boy denied it, did you desire him to speak truth?

S. Edwards. Yes, I did.

Mr. *Thompson*. And when Mr. Braddon examined him, did he desire him to speak truth?

S. Edwards. Yes, he did.

L. C. J. But he knew before he examined him that he had denied it, did not he?

S. Edwards. Yes, the second time before he came into the house.

Braddon. I desire the old gentleman may be asked this question.

Mr. *Thompson*. Call Mr. Edwards again.

L. C. J. The spirit of the client was got into the counsel I think just now, and now it is got into the client again. 'Tis an hard matter to lay it, I perceive.

Mr. *Wallop*. My lord, I am here of counsel for Mr. Braddon, and I only ask questions as they are in my breviate.

L. C. J. But, Sir, if you have any thing in your breviate that reflects upon the government, you ought not to vent it, nor shan't be permitted to vent it as long as I sit here.

Mr. *Wallop*. My lord, with submission, I hope I never did nor never shall let any such thing come from me.

L. C. J. Nay, be as angry, or as pleased as you will, it is all one to me, you shall not have liberty to broach your seditious tenets here.

Braddon. Mr. Edwards, Pray will you answer this question? Did not your son, when he was asked why he denied it, say that it was fear and discouragement, through his sister's threats, was the cause? Pray speak the truth.

Edwards. I cannot tell whether the child did say so, something of that nature he did say.

Mr. *Thompson*. Call Anne Burt.

L. C. J. We have got such strange kind of notions, now-a-day, that forsooth men think they may say any thing because they are counsel. I tell, you, Mr. Wallop, your questions did reflect upon the government, as though the king had a mind to turn a man out of his employment, if he did not swear a falsity. What can be a greater reflection than that? But all the matter is, what has been done must be avouched and justified, though it be never so ill. But we plainly see through all. This was the design from the beginning, the king and the duke of York were in the Tower at that time, and it must be thought and believed that they had designed this matter, and so then all the people must be ruined in case they would not say the earl murdered himself, though indeed others had done it.

Mr. *Wallop*. Mr. Edwards did not delight to have such a report, as might create trouble, first come out of his house.

Braddon. My lord, as to the making such an inference, or any reflection as your lordship mentions, I am as far from it as any body here.

L. C. J. We must give a wonderful deal of countenance to such barbarous and horrid practices, and I warrant you must suffer the government to be reflected upon at the will and pleasure of every man. No, let us hear the truth, but not in the face of a court permit men to asperse the government as they please by asking such questions.

Att. Gen. And the witnesses say nothing to it neither.

L. C. J. No, nothing at all like it, but it is aspersion for aspersion sake. And we must sit still and hear it.

Mr. *Wallop*. My lord, I think it is for the honour of the government to have all things fairly enquired into.

L. C. J. And it is for the honour of all courts of justice not to suffer reflections upon the government, let them be by whom they will. And in gentlemen of the bar it is worse than others.

Just. *Withins*. Truly, I do not see where there is any countenance for asking such a question.

L. C. J. No, but some people are so wonderful zealous——

Mr. *Wallop*. My lord, zeal for the truth is a good zeal.

L. C. J. It is so, but zeal for faction and sedition, I am sure is a bad zeal. I see nothing in all this cause but villany and baseness. And I believe no man that has heard it, but will readily acknowledge that it appears to be an untoward malicious ugly thing, as bad as ever I heard since I was born, on purpose to cast an indignity upon the king and government, and set us all in a flame.

Then *Anne Burt* appeared, and was sworn.

Braddon. Mrs. Burt, I desire to know what discourse you had with Mrs. Edwards, and that family?

Att. Gen. I beg your pardon for that, here Mrs. Edwards is herself to tell what she has said.

Braddon. I desire to know what discourse she had with any of the family?

Mrs. *Burt.* I went to make a visit to Mrs. Edwards, and I had not been there half an hour but in comes this gentleman; now I had asked no questions about the business, but in he comes and desired to speak with Mrs. Edwards; Mr. Edwards was called, and when he came in with Mr. Edwards, the gentleman sat down in the room, and told Mr. Edwards he had heard a report of something his son had spoken, but he desired to have it from his son's own mouth, and the boy was called in, (this is a real truth, Sir, for I do not know whether I may stir from this place where I am alive or no;) And when the boy came in, the gentleman said to him, if it be true that you have reported, own it; if not, do not own it; for, said he, it is a dreadful thing to be found in a lie, I would have you read the 5th Chapter of the Acts, where a man and a woman were struck dead for telling a lie. Sir, said the boy, it is true, and what I said I will speak it before any justice of peace in the world. And then he asked him what he had reported, and the boy made a repetition of what he had seen and said before, that he went into the Tower and came to the first row of houses that goes along. And at the first house he saw nobody look out at the window, nor at the second house, but he looked up at the third house, and he took his hand and shewed thus, said he, I saw a man's hand he did not say, but an hand throw a razor out, of this fashion, and he imitated it with his hand. Said the gentleman, was it not the wrong window, or the wrong house? I will not take the thing upon this credit, take your other brother down, that was a bigger boy than this, and, says he, go down to the house, and shew your brother the window where you saw this. The two boys went down, and he shewed his brother the place where he saw the hand——

L. C J. Were you present at his shewing?

Mrs. *Burt.* Will your lordship please to give me leave——

L. C. J. And pray give me leave too. I ask you, Were you present? For you tell it as if you knew it yourself.

Mrs. *Burt.* Both the boys came up and said so.

L. C. J. You should have said so then, that they told you it, for you are upon your oath, and must affirm nothing but your own knowledge.

Mrs. *Burt.* If I do misplace my words I cannot help that——

L. C. J. You misplace your evidence, woman, you must not swear that to be true, that you don't know to be true.

Mrs. *Burt.* My lord, I heard what I say with my own ears.

L. C. J. But you talk of a thing you did not see with your own eyes, as if you had seen it.

Mrs. *Burt.* I beg your pardon, my lord, I can't tell how to place my words so exactly.

L. C. J. I care not how thou placest thy words, tell thy own knowledge.

Mrs. *Burt.* I tell what is truth, what I heard and saw; for, said Mr. Braddon, I believe it was not the right window, when the boy came up and said he had shewed the window. And this gentlemen, I cannot hit his name right, (he is a stranger to me) he and Mr. Edwards went down with the boy, to see whether it were the right window of the house where my lord died (which where it is I cannot tell any otherwise than has been reported, or whether there be one room or two of a floor I do not know;) and when he came up again he called for a sheet of paper, that he might write from the boy's mouth, and that he might not differ one word from what the boy had said himself. And when I saw Mr. Braddon begin to write I went away, for I thought it may be the gentleman might expect I should set my hand to it as a witness, and I did not desire any trouble.

Braddon. I desire this question may be asked her, my lord, Do not you remember it was said the boy denied it?

Mrs. *Burt.* Yes, it was said, the boy did deny it.

Braddon. What did his sister say was the reason of his denying it?

Mr. *Thompson.* Ay, what did you hear the sister say?

L. C. J. I told you before, that was no evidence what another body did say.

Mr. *Wallop.* Mistress, The boy denied it, for what reason?

Mrs. *Burt.* Because his sister, as his mother told me, had been talking to him.

L. C. J. As his mother told you, prithee woman, speak your own knowledge, and not what another body told thee.

Mrs. *Burt.* Pray, give me leave, my lord——

L. C. J. I tell thee, I will not give thee leave to say what thou shouldest not say.

Mrs. *Burt.* I heard his sister say——

L. C. J. It is not evidence if thou didst hear never so many people say it.

Mrs. *Burt.* My lord, I speak nothing but the truth.

L. C. J. Shall we allow that in this case for evidence that we allow in no other case; for

what reason, pray? I do not see it deserves any such extraordinary favour.

Just. *Withins.* Mr. Wallop, we must not hear what another said, that is no party to this cause. You know it is no evidence, therefore do not press it.

Mrs. *Burt.* My lord, I have done, if that will satisfy you.

L. C. J. Prithee, satisfy thyself, good woman.

Mrs. *Burt.* My lord, I have done. I come here to speak the truth, and so I do.

L. C. J. Nay, prithee be not so full of tattle, so full of clack.

Then a little girl came into court.

L. C. J. What age is this girl of? How old art thou, child?

Girl. I was 13 last Saturday.

L. C. J. Do you know the danger of telling a lye?—*Girl.* Yes.

L. C. J. Why, what will become of you if you tell a lye?

Girl. The devil will have me.

L. C. J. Give her her oath. What is thy name, child?

Girl. Jane Lodeman.

Then she was sworn.

L. C. J. Child, do not be afraid of any thing in the world, but only of telling any thing but what is true; be sure you do not tell a lie, for if, as you say, you shall be in danger of hell-fire by telling a lie, much more will you be in danger if you swear to a lie. Now, what do you ask her?

Braddon. What did you see in the Tower that morning the earl of Essex died?

Lodeman. I saw a hand out of a window, but I cannot tell what window it was, but it was a hand throw out a razor.

Braddon. And what did you hear after that?

Lodeman. I cannot well remember, but it was either two shrieks or two groans that I heard presently after.

L. C. J. What time of the day was it, child?

Lodeman. It was between 9 and 10 of the clock.

L. C. J. Who was with you besides yourself there?

Lodeman. There were more besides me, but they went away.

L. C. J. Who were they, child?

Lodeman. A great many that I did not know.

L. C. J. And how came you to take notice of it?

Lodeman. And there was a coach stood just at the door.

L. C. J. Tell us some of them, child, and that were there besides thyself, speak the truth, be not afraid. Thou sayest a great many people were there, and all the people, must necessarily see it.

Lodeman. They were people I did not know.

L. C. J. But they all saw it as well as you?

Lodeman. So I suppose they did.

L. C. J. And you heard a shriek or two, you say?

Lodeman. Two shrieks or two groans, I can't well remember which.

L. C. J. How high was the window?

Lodeman. Not above one pair of stairs high.

L. C. J. How high from the ground might it be?—*Lodeman.* Not above one story.

Mr. *Thompson.* Whereabouts in the Tower was it?

Lodeman. Sir, it was as you go upon the mount.

Mr. *Wallop.* Whose lodging do you think it was?

Lodeman. I did not know whose it was, but folks said it was the earl of Essex's

L. C. J. Who did you tell this to?

Lodeman. I told nobody till I came to my aunt, and I told her.

L. C. J. What is her name?

Lodeman. Margaret Smith.

L. C. J. Did you ever tell this to that man?—*Lodeman.* Yes, afterwards I did.

L. C. J. How came he to enquire of you about it?

Lodeman. He came and asked me, and I could not deny it.

L. C. J. Ay, but how came he to ask you?

Lodeman. There was a gentlewoman that was at our house, and she heard of it, and spake of it at a gentlewoman's at dinner, and so he came to our house to enquire about it.

L. C. J. Who is that gentlewoman? What is her name?—*Lodeman.* Susan Gibbons.

L. C. J. Let me see the information of this girl, that Mr. Braddon had taken?

Cl. of Cr. Yes, my lord, there it is.

L. C. J. Do you know my lord of Essex's lodgings?—*Lodeman.* They said it was his.

L. C. J. Did you know it of your own knowledge?—*Lodeman.* No, Sir, I did not.

Mr. *Thompson.* Pray what became of the razor that was thrown out of the window, after it was thrown out?

Lodeman. I saw a woman in a white hood come out, but I did not see her take it up.

Sol. Gen. Girl, you say, that when you were at this place in the Tower, and saw this matter, there were a great many people there besides yourself?—*Lodeman.* Yes, Sir.

Sol. Gen. Did the razor fall among the people that stood there, or did it fall out in the street, or how?

Lodeman. Sir, it fell within the pales.

Sol. Gen. And was the passage easy into the pales?—*Lodeman.* Yes.

Sol. Gen. What, they must climb over, must they?

Lodeman. No, you need not climb over, there is a door to go in. And when people went in the soldier opened the door.

Sol. Gen. Who went in with the soldier? Did you see any body go in?

Lodeman. There was a man went in, but I know not who he was.

Sol. Gen. Did the soldier stand at the door when this razor was thrown out?

Lodeman. I cannot tell that, a soldier used to be at the door.

Sol. Gen. The woman came out of the lodging, did she not?—*Lodeman*. Yes.

Sol. Gen. Did she go in again?

Lodeman. I did not see her go in again.

Sol. Gen. Did she go into the pale?

Lodeman. I did not see her go into the

Sol. Gen. Did you see the razor after it fell upon the ground?—*Lodeman*. No.

Sol. Gen. Was it bloody?

Lodeman. Yes.

Sol. Gen. Very bloody?

Lodeman. Yes.

Sol. Gen. Did you see nobody take it up?

Lodeman. No, I did not.

Sol. Gen. Come hither, child; are you sure it was a razor, or a knife?

Lodeman. I am sure it was a razor.

Sol. Gen. Was it open or shut?

Lodeman. It was open.

Sol. Gen. What colour was the handle?

Lodeman. Sir, I cannot tell, I see it but as it flew out.

Sol. Gen. Was it all over bloody?

Lodeman. No.

Sol. Gen. All but a little speck?

Lodeman. It was very bloody.

L. C. J. Blessed God, What an age do we live in! Girl, you say, you did not know it to be my lord of Essex's window?

Lodeman. No, but as they told me.

L. C. J. Nor you did not see any body take up the razor?—*Lodeman*. No.

L. C. J. But you are sure you did not?

Lodeman. I am sure I did not.

L. C. J. But, child, recollect thyself, sure thou didst see somebody take it up?

Lodeman. No, I did not.

L. C. J. I ask thee again, Didst not thou know it to be my lord of Essex's window?

Lodeman. No, but as they told me.

L. C. J. Did you hear nobody speak to the maid that came out?

Lodeman. Nobody at all.

L. C. J. No, pr'ythee is that thy hand, child? Shew her the paper, the uppermost part of it.—*Lodeman*. Sir, I cannot write.

L. C. J. Who put thy name to it?

Lodeman. Sir, I do not know, no more than the Pope of Rome.

L. C. J. Whose hand-writing is that?

Lodeman. I cannot tell, I never could write in my life.

Braddon. Those are the names of such as heard her say it.

Att. Gen. Yes, you have cooked it up bravely.

L. C. J. You shall see what a brave managery you have made of this poor child. Read the Information.

Cl. of Cr. Reads.—'The eighth of August, '1683, Jane Lodeman, aged about 13 years, 'did in the presence of these whose names are under-written, declare as follows, That the said Jane Lodeman was in the Tower on Friday morning, the 13th of July last, and standing almost over-against the late earl of Essex's lodging-window, she saw a hand cast out a razor out of my lord's window, and immediately upon that she heard shrieks; and that there was a soldier by my lord's door, which cried out to those within the house, that somebody should came and take up a razor, which was thrown out of the window, whereupon there came a maid with a white hood out of the house, but who took up the razor she cannot tell.'

L. C. J. Here it is said 'the soldier cried out,' but now she says, the soldier she does not know was there, and she heard nobody speak to the maid.

Braddon. With submission, my lord, I desire to ask her this question

L. C. J. Pr'ythee ask her what thou wilt. We hear what she says.

Braddon. Did you hear the soldier cry out, or did you not?—*Lodeman*. No, I did not.

Braddon. Did not you say, you heard him cry out?

Sol. Gen. My lord, we cannot admit Mr. Braddon should ask such questions, they are leading questions. Ask her a general question, and you shall have an answer, but you shall not give her words to swear to.

L. C. J. No, upon my word, you have given her too many words to swear to already.

Braddon. My lord, I only writ what she declared.

Sol. Gen. Were you carried by Mr. Braddon before any magistrate, or any justice of peace?—*Lodeman*. No.

Sol. Gen. Did he take the examination himself?—*Lodeman*. Yes.

Att. Gen. Did not he desire you to go before a justice of peace to be sworn?

Lodeman. No, Sir.

Sol. Gen. Did he write it himself?

Att. Gen. Ay, he writ it, and took it, and this woman that is coming here, is a witness to it.

L. C. J. What is this woman's name?

Braddon. This is the aunt, Margaret Smith. [Who was sworn.]

L. C. J. Well, what say you to her?

Braddon. I desire to know, what this girl said to you, when she returned from the Tower the 13th of July?

Mrs. Smith. She said to that effect that she speaks now.

Braddon. What was that? Tell the court.

Mrs. Smith. I chid her, because she had been playing: That is all I can say.

Just. Withins. Did she tell you, the soldier cried out for somebody to come and take up the razor?

Mrs. Smith. I cannot say that.

Just. Withins. Did she say, she saw a razor thrown out of my lord of Essex's window?

Mrs. *Smith.* She said, she saw a razor thrown out of a window: I cannot tell whether she said out of my lord of Essex's window.

Mr. *Freke.* Did you set your hand to that paper?

L. C. J. Were you a witness to that paper?

Mrs. *Smith.* There were others heard what the girl said, as well as I.

L. C. J. Who desired you to sign it.

Mr. *Freke.* Who writ that paper, mistress?

Mrs. *Smith.* Pray excuse me, Sir, I do not know.

Mr. *Freke.* Did you see it writ?

Mrs. *Smith.* No.

L. C. J. No: It was one got ready drawn by Mr. Braddon.

Just. *Holloway.* Pray let the boy's information be read again, for I observe there is a difference; she says, the razor fell within the pales; the boy says, it fell without.

L. C. J. Ay, ay, the one says it was the inside; the other the outside of the pales.

Then the Information was read.

L. C. J. Go on now and ask your questions.

Braddon. Did the girl say, that after the razor was thrown out, the soldier cried to somebody to take it up?

Mrs. *Smith.* Sir, I can say no more than what I have said.

Braddon. Did she, or did she not?

Mrs. *Smith.* Pray, Sir, excuse me; I have spoken what I know.

Att. Gen. You may see how he has managed this matter, my lord, by his urging the witnesses with questions they know nothing of.

L. C. J. Yes, yes, we see he would fain put words into their mouths.

Att. Gen. Mistress, Did you send to Mr. Braddon, to inform him of what the girl had said? or did he come to you?

Mrs. *Smith.* Sir, I never saw him before in my days.

Att. Gen. He came first to you then?

Mrs. *Smith.* Yes: he hearing of it, came as a stranger to me.

Braddon. Did I, directly, or indirectly, offer you, or your niece, any thing?

Mrs. *Smith.* No, never in this world.

Braddon. Did I ever desire her, or you, to say any thing but what was true?

Mrs. *Smith.* No, Sir; you ever encouraged the girl to speak truth; and bid her speak nothing but what was truth.

Att. Gen. You need not pay dear for a lie; you are like to pay dear enough before you have done.

Braddon. My lord, as to personal knowledge, I am as much a stranger to this matter, as any body here; and in all my concern in it, I have done nothing but what was very fair.

L. C. J. Mind your defence, Mr. Braddon, and leave commending yourself; or, if you will, rather commend yourself by your actions, than your expressions; one good action is worth twenty good expressions.

Braddon. Swear William Glasbrooke.

[Which was done.]

L. C. J. Well, what do you ask him?

Mr. *Freke.* My lord, we desire to know of him, whether he was by on the 13th of July, when the girl gave this report?

Glasbrooke. I was up two pair of stairs when she came in.

L. C. J. What is your name, Sir?

Glasbrooke. William Glasbrooke.

Cl. of Cr. Ay, here is his Information, among those that were taken about Braddon.

Glasbrooke. She came in to her aunt, that went out just now before me, and I heard her very loud with her aunt, saying, the earl of Essex had cut his throat in the Tower. Her aunt chid her upon it; and her aunt chiding her, she said, she was sure it was true; for she saw a bloody razor, with a bloody hand, thrown out of the window.

Mr. *Freke.* Was this the day of my lord Essex's death?

Glasbrooke. It was the day the king was in the Tower, and, as was reported, the day he was killed.

Braddon. Were you present when I first discoursed the girl?—*Glasbrooke.* Yes.

Braddon. Had you ever seen me before, or no?—*Glasbrooke.* No.

L. C. J. Did she say, my lord of Essex cut his throat at that time?—*Glasbrooke.* Yes.

L. C. J. Are you a witness to this paper? Did you set your hand to this paper?

Glasbrooke. To the paper Mr. Braddon writ, I did: I am a witness to that.

L. C. J. Then read his Information.

Cl. of Cr. [Reads].—— 'Mr. William Glasbrooke does declare, That one Jane Lodeman, aged about thirteen years, inhabiting in the same house where he, the said William Glasbrooke, lodged, did on Friday the 13th of July last past, between ten and eleven in the morning, in the presence and hearing of him, the said William Glasbrooke, declare to her aunt, That the earl of Essex had cut his throat; upon which her aunt was very angry with her; whereupon she, the said girl, did declare, That she was sure of it: for she saw him throw the razor out of the window; and that the razor was bloody; and that she heard two groans or shrieks (which of the two words she used, he the said William Glasbrooke, is not certain:) Of this, he, the said William Glasbrooke, is ready to make oath.'

L. C. J. Now my lord of Essex cut his own throat, and after threw the razor out of the window.

Glasbrooke. 'Tis what the girl did declare.

Att. Gen. Does not this girl usually tell lies?

Glasbrooke. I have before that time taken her in a lie.

Att. Gen. Did you acquaint Mr Braddon with that?

Glasbrooke. I cannot tell that I did.

Att. Gen. Do you remember that you told

Mr. Braddon, That she was a girl that told truth?

Glasbrooke No, I never did that; for I was always of another persuasion about her.

Sol. Gen. He never was of that temper, to praise her; he was always of a contrary persuasion.

L. C. J. I will assure him, that I am of his opinion too: I do believe that she is a lying girl, and hath told us a company of lies now.

Braddon. These two children told me, they never saw one another till they were examined at the Council.

L. C. J. Well, well; Go on with your witnesses.

Braddon. Where is William Smith? [Who appeared and was sworn.] I desire to know of you, Mr. Smith, what you heard the girl say, when I was there?

Smith. I heard the girl tell us, That she saw a hand cast out a razor, and either the hand was bloody, or the razor, I cannot tell which; but she said it was out of the window, where she said the earl of Essex lodged.

L. C. J. Did she say the earl of Essex did it himself?

Smith. She said she saw an hand cast out a razor.

L. C. J. Did she tell you, it was the earl of Essex's lodging window.

Smith. She said it was that lodging.

L. C. J. Ay, but she says now she does not know it to be his lodging.

Braddon. My lord, she said she was told it was his lodging.

L. C. J. But you have made her to say positively, it was his lodging, and that he threw out the razor.

Sol. Gen. Pray, Sir, where did you first hear this report of this girl?

Smith. There at the house where she was.

Sol. Gen. Were you alone when you went to the girl the first time?

Smith. No, I went with Mr. Braddon.

Sol. Gen. Did you hear any thing of it before? What did induce you to go along with Mr. Braddon? What were the arguments that prevailed with you to go with him?

Smith. I did not know where he was going; Mr. Braddon called me at the shop, as I stood at the door, and asked me if I was busy, or would go with him? So I went with him to the tavern.

Sol. Gen. You never heard one word before of the girl's report.

Smith. No, I did not.

L. C. J. What else did the girl tell you?

Smith. I cannot say what else she said. This I remember that I have told you.

L. C. J. Did she name the earl of Essex's lodgings?

Smith. I am sure she said the lodging where the earl of Essex lay.

L. C. J. Did she name the earl of Essex?

Smith. She did name the earl of Essex's lodgings.

L. C. J. Did she in so many words say, That it was the earl of Essex's lodgings?

Att. Gen. Your lordship sees, they give one evidence, and she another.

Smith. I cannot say whether she did in so many words say so, or no; but she said, that she saw a hand toss out a razor, and either the hand was bloody, or the razor, and it was where my lord of Essex's lodgings was.

L. C. J. But did she name my lord of Essex's lodgings?—*Smith.* Yes, she did.

L. C. J. Well, what else did she say? Tell us all she said.

Smith. She said, there was a man stood below, and she heard two shrieks, and the man did say, here is a razor; and a woman came out, or one in woman's clothes, with white head clothes. Mr. Braddon asked if she see any body take it up, and she said, no; but she heard a man say here is the razor, and she saw a woman come out.

L. C. J. You are sure that is all you heard her say?—*Smith.* I think so.

L. C. J. Recollect yourself, pray, good Mr. Smith.

Smith. I do not know that I heard any thing else.

L. C. J. Pray read his Information.

Cl. of Cr. Here is William Smith subscribed.

Smith. Mr. Braddon writ down what the girl said, and we did read it over all, and then set our hands to it.

L. C. J. Well, Sir, read the Information then.

Cl. of Cr. reads the Information as before—

L. C. J. You hear what you have affirmed in this paper, that the girl said; you have forgot in your evidence now this long business about the soldier.

Smith. My lord, I have told all I did remember.

L. C. J. Why, you have set your hand to it.

Smith. I did read it over, and it was nothing but what the girl said, I am sure.

L. C. J. Where do you live?

Smith. In Throgmorton street.

L. C. J. What trade?——*Smith.* A barber.

L. C. J. A notable shaver, upon my word! a special fellow, I'll warrant him!

Braddon. Call Mrs. Mewx. [Who appeared and was sworn.] Pray what day was it you went from London to Berkshire?

Mrs. *Mewx.* The day before my lord Russell was tried.

Braddon. What expression did you hear from a gentleman in the coach?

L. C. J. We must not suffer such a question to be asked, that is not evidence.

Braddon. My lord, I ask the question in general terms, what she heard such a day?

L. C. J. Does she know any thing of her own knowledge?

Braddon. She can tell what she heard, my lord.

L. C. J. 'Tis no evidence.

Braddon. Will your lordship please to hear what she says?

L. C. J. No, I will not hear what I should not hear; let her speak what she knows.

Braddon. She knows this, that a woman told her——

L. C. J. Ask your counsel, whether that be evidence. If you will not be satisfied with what I say, ask them?

Mr. *Wallop.* She proves a report.

L. C. J. I ask it of you, Mr. Wallop; Is what another said to her, evidence in this case?

Mr. *Wallop.* My lord, if really there was such a report——

L. C. J. Is that evidence?

Mr. *Wallop.* 'Tis evidence there was such a talk, and that is evidence of the probability of the thing.

L. C. J. I'll leave it to yourself, if you as a lawyer say it is evidence, we will hear it, because you say so; but I believe you, nor no body else will offer to say any such thing.

Mr. *Wallop.* My lord, we lay it before the court, as part of the ground upon which we went, in our being concerned in this business.

L. C. J. Is that a justification of Mr. Braddon?

Mr. *Wallop.* Upon these probabilities he engaged in this matter, and to prove this report, he brings this gentlewoman to tell what she heard.

L. C. J. Why, is what the woman told her, evidence; she reported a report to me, can that be evidence?

Mr. *Wallop.* My lord, with submission, we think it justifies Mr. Braddon, that he went upon these grounds.

L. C. J. Where is the woman that told her? Why is not she brought?

Mr. *Wallop.* They say, she is so big with child she can't come.

L. C. J. Why, if that woman were here herself, if she did say it, and would not swear it, we could not hear her; how then can her saying be an evidence before us? I wonder to hear any man that wears a gown, to make a doubt of it.

Braddon. I desire Jeremy Burgis may be called. [Who appeared and was sworn.]

Mr. *Wallop.* What can you say about the report in the country?

Burgis. I was at Frome about my business on a Friday———

L. C. J. Why, gentlemen, what are we doing all this time? Do you think we sit here for nothing? Is not this the first time that a report was given as evidence in Westminster-hall?

Mr. *Freke.* My lord, we are necessitated to use this sort of evidence.

L. C. J. I tell you, Sir, it is no evidence, be necessitated what you will.

Mr. *Freke.* My lord, they have produced this man's letter that was taken about Mr. Braddon, that is produced in evidence against him: Now this man comes to give an account how he came to write that letter.

L. C. J. But he shall not give an account by a report in the country.

Burgis. It was written to the landlord of the house where I quartered, that he might give notice to Mr. Braddon of a discourse that passed in his house that Friday, of a report that was there concerning the earl of Essex's murdering himself.

Att. Gen. Had the master of the house told you any such thing?

Burgis. No, he had not told me so; but I heard it in the house.

L. C. J. Of whom did you hear it? who told you so?

Burgis. Sir, I was a stranger there.

L. C. J. They can never tell any of them, who it was first reported it, nor particularly who told it them; but it was reported by some body, we don't know who.

Beech. Under favour, my lord, I rode directly to the postmaster at Frome, whither this letter was directed, and by the way, there is a remark in the letter of an alteration of the figure, it is interlined the 13th; it was not so before, to hit the day exactly of the murder of the earl of Essex; and when I came thither, the postmaster told me, there was no such report in his house, nor in the whole town at that time.

L. C. J. I desire to know, upon your oath, who told you that report?

Beech. Sir, I do not know; I was a stranger there.

L. C. J. Was it a man or a woman?

Burgis. He did not tell his discourse to me.

L. C. J. But thou could'st guess by the habit, whether it was a man or a woman?

Burgis. It was a man.

L. C. J. Who did he tell it to?

Burgis. The company in the house.

Att. Gen. Pray, let him tell how Mr. Braddon came to speak to him about it?

L. C. J. Shew him that letter. Look upon friend; Is that your hand?

Burgis. Yes, it is.

L. C. J. When did you put that figure of 13 in? There was another figure before, and that is blotted out.

Burgis. It was a mistake in me, I mistook the day, and I corrected it.

L. C. J. When did you correct it? How soon did you correct it?—*Burgis.* Presently.

L. C. J. What day had you put in first?

Burgis. The 6th day.

L. C. J. Ay, but that was not the right day, man.

Burgis. It was a great while after, and I did not expect to be brought in question for any such thing.

L. C. J. How long after?

Burgis. Six weeks.

L. C. J. How camest thou to recollect, to make it from the 6th to the 13th, six weeks after?

Burgis. Mr. Braddon was there when I had writ it.

L. C. J. And he corrected it, did he?

Burgis. He said, that that was not the day of my lord's death.

L. C. J. You had written it the 6th, and he put you in mind of the 13th?—*Burgis.* Yes.

Att. Gen. And he was to be the messenger that carried the letter himself?

Burgis. Yes, he was.

Sol. Gen. That is very well. I suppose, gentlemen, you hear what he says, he says, Mr. Braddon was there, and told him that was not the day.

L. C. J. Ay, Mr. Braddon said, You have mistaken the time, that will not do it, it must be the 13th.

Att. Gen. Pray let me know one thing, who recommended Braddon to you?

Burgis. Indeed I can't tell.

L. C. J. Who did he say he came to you from? Tell the truth, upon your oath.

Burgis, Sir, I was at work at my business, and knew nothing of his coming.

L. C. J. What trade art thou?

Burgis. A pinmaker.

L. C. J. Where do you live?

Burgis. At Marlborough.

L. C. J. How came Mr. Braddon and you acquainted?

Burgis. Sir, I will tell you; I was at work at my trade, and there came down a gentleman that lives in our town to me, and asked me—

L. C. J. What is that gentleman's name?

Burgis. Mr. Butcher.

L. C. J. What is that Butcher?

Burgis. A gentleman that lives in Marlborough, a grazier by trade. He came and told me, there was a gentleman came from London, about the business now in dispute—

L. C. J. Prithee, what was spoke of?

Burgis. It was concerning the earl of Essex's death. And he desired me to speak what I heard at such a time.

L. C. J. Who had you told what you heard first to? You must have told it to somebody; who did you tell it to first?

Burgis. Indeed I can't directly say who I did tell it to.

L. C. J. Had you told that gentleman of your town, Butcher, as you call him?

Burgis. No, not that I know of.

L. C. J. Well, when he came to you, what then?

Burgis. He desired me to go to Mr. Braddon to the White Hart. And so I went up to the White Hart; and when I came to Mr. Braddon, I told him what I had heard at Frome.

L. C. J. And what then?

Burgis. Then Mr. Braddon asked me the same night, whether I would go down with him to Frome, and I could not; so then he desired me to write a letter to recommend him to the house where I had heard it.

Sol. Gen. And you did write that letter?

Burgis. Yes, I did so.

Att. Gen. Your lordship observes, this house was the post house, to be sure, to have it spread in public places.

Sol. Gen. Did you tell Butcher of your knowledge, before he carried you to Braddon?

Burgis. Yes, Sir, I did.

Sol. Gen. When?

Burgis. Then, at that time,

Sol. Gen. Did he ask you of your knowledge, or did you tell him voluntarily?

Burgis. He asked me if I remembered any such thing as I had spoken.

Sol. Gen. Why, had you spoke of it before?

Burgis. Yes, I had.

Sol. Gen. Did he tell you upon whose recommendation he came to you?

Burgis. I do not know upon whose recommendation he came.

L. C. J. When you writ this letter, did he dictate it to you, or did you write it of yourself?

Burgis. I writ it of myself.

L. C. J. Did he tell you what you should write?

Burgis. I shewed him what I had written.

L. C. J. And when you writ it, of yourself you put in the 6th day?

Burgis. Yes, I did so.

L. C. J. What he did say then?

Burgis. Mr. Braddon said, it was the 13th day.

Sol Gen. Why did you shew Braddon your letter after you had written it?

Burgis. He came to my house before I had sealed it.

L. C. J. But why did you shew him the letter?

Burgis. He desired a letter to recommend him to that man at whose house I heard it.

Sol. Gen. What was he to be recommended to him for?

Burgis. It was to desire him to inquire, who brought the news first to town.

Sol. Gen. You say, he desired a letter of recommendation?

Burgis. Yes, it was to recommend him to that man.

Sol. Gen. That you may not be in a mistake, pray recollect yourself; for there is not one word of recommendation in the letter. Tell the true reason, why you shewed him the letter?

Burgis. I can't tell any other, but only he came before I had sealed it.

Sol. Gen. Did he desire to see it?

Burgis. No, but the letter lay writ upon the table.

Sol. Gen. Was the master of the post-house at Frome present, when that report you talk of was made?

Burgis. I cannot rightly say, whether he was or no.

L. C. J. How comest thou to put it in thus? This bears date a pretty while ago, Marlborough, Aug. 21, and that was a good distance of time from that report that thou talkest of: How comest thou then to say, These are to desire you to call to mind, That I was at Frome such a time, and heard such a report: If he was not there, why should he call to mind? What didst thou mean by that calling to mind?

Burgis. I would have had him called to mind my being at his house at that time.

L. C. J. But if he was not there, why didst thou ask him to call to mind that report?

Burgis. He might hear of it from some

other at that time, though he might not hear it in that company where I was.

Sol. Gen. There is a riddle in it, if we could but solve it.

L. C. J. No, no, Mr. Solicitor, the riddle is unfolded; it is a plain contrivance.

Att. Gen. Pray, from whom did he tell you he was recommended?

Mr. *Recorder.* How came you to talk so to a stranger, Sir, whom you never see before, about such a business?

Burgis. He was recommended to me by Mr Butcher, as I told you, who carried me to him.

Att. Gen. But who, as Braddon, or Butcher told you, did recommend him first to come down thither to you?

L.C. J. Upon your oath, Sir, who did Butcher tell you he came from?

Burgis. I have forgotten, Sir; I do not remember.

Mr. *Recorder.* Was it not a non-conformist parson, Sir, upon your oath?

Burgis. Sir, I cannot remember.

Att. Gen. Mr. Beech, do you know any particular person that Braddon said he came recommended from?

Beech. I can tell what account Braddon gave of his journey himself. He said, he had a letter that came particularly from this man to London, to bring him down into the west: Said I, when came you out of London? I came on Thursday, said he: Where did you lodge a Thursday night? At Ockingham. Said I, That is not your way to Marlborough: Where did you lie the next night? He told me, at one Venable's; and the next night at Salisbury, I think.

L. C. J. Did Braddon tell you he had a letter from that man?

Beech. He said a letter from that man brought him down into the West

L. C. J. Burgis, Did you send him ever a letter?—*Burgis.* No, I did not.

Beech. He said he came down purposely upon this report.

Att. Gen. What said the postmaster to you, Mr. Beech?

Beech. If you please to give me leave to speak, I will tell you: I did desire, that Mr. Braddon might have no pen and ink, and presently I rid away to Frome, to this postmaster's house, and spake with the postmaster, and all his family: We then examined them all, and there was no such report in that town until the Sunday after.

Sol. Gen. He was persuaded, sure, all people would say just as he would have them.

Mr. *Thompson.* Well, Mr. Braddon, who do you call next?

Sol. Gen. Nay, I desire this man may go on: for methinks he mends every step he goes.

Braddon. Mr. Burgis, do you remember how it was that you came to recollect yourself, and to know it was the 13th, and not the 6th?

L. C. J. He says, you told him.

Braddon. Pray, Sir, remember yourself, whether you did not say yourself you remembered the true time; for you came from Frome to Marlborough on the Saturday night, and then you heard there the earl of Essex had cut his throat the day before; and when they told you so, you cried out, how can that be? It must be done before; for yesterday I heard of it at Frome before five of the clock.

Just. *Withins.* Did not Mr. Braddon himself tell you, you had mistaken the day?

Braddon. Sir, it was from this, he told this whole story that I just now repeated, that the Saturday night he was told, that the earl had cut his throat, and replied to them, that he had heard at Frome, the day before, that he was murdered, and then I said, that must be the 13th.

L. C. J. How came you to tell that man, you had a letter from Burgis?

Braddon. No, my lord, I did not tell him any such thing.

L. C J. Mr. Beech, did not he tell you he had a letter from Burgis?

Beech. He told me he came down upon the information of this Burgis.

L. C. J. And he swears he never saw him before, nor never writ to him.

Braddon. You ask me, whether I had received any letter from this Burgis. I told you I had a letter of recommendation to Mr. Butcher, thinking he had been the person that had reported it, and Mr. Butcher went to this person and brought him to me, and he told me what he heard.

Beech. I never heard of the name of Butcher till now he mentioned it.

Braddon. My lord, I will call no more witnesses.

Att. Gen. Your lordship and the jury observe, I suppose, his confident behaviour.

L. C J. Ay, He is no more concerned at it, than if he had been doing the most justifiable thing in the world.

Mr. *Thompson.* My lord, I have but one word to add on the behalf of Mr. Speke, who is likewise joined in this information. Truly, Mr. Speke is a young gentleman of some quality, his father is of very good quality. Mr. Braddon was of his acquaintance, and being his acquaintance, and thus concerned, as you have heard in the prosecution of this business; he hearing of these reports, and resolving to go down into the country about it, desired Mr. Speke to lend him his man and his saddle, for he was going into the country. Mr. Speke inquires what his business was, whereupon he told him it was to inquire about some persons that had reported something relating to the earl of Essex's death. And being to go into the country where Mr. Speke, who was that country-man, had some acquaintance, upon this he desires him to write him a letter, to recommend him to some persons of credit. He did write that letter, but was never concerned in this business, either before or after, and this is the whole of the case, as to this Mr. Speke.

Mr. *Speke.* My lord, I desire I may speak one word for myself.

L. C. J. Ay, say what you will.

Mr. *Speke.* My lord, one day, some time after Mr. Braddon had concerned himself in this thing, I met him casually and accidentally, and he was telling me somewhat of the matter. And after this, one night as I was going to bed, between 10 and 11 at night, somebody knocked hard at my door. My man went to the door, and opened the door, and Mr. Braddon comes in, and tells me, he desired the favour of me, that I would lend him my man, and lend him my saddle. He being my acquaintance, and I knowing him, I was willing to do him that kindness; and asking him, whither he went? He told me he was going down to Marlborough, and he told me he had heard that my lord of Essex's death was discoursed of there in the country that day it was done; besides other things of a boy and of a girl, that could prove such and such things. Said I, This is a thing of great concernment, and I would have you take good advice in it, before you proceed, because otherwise it may be a reflection upon the government; therefore, said I, I would not have you proceed to concern yourself further in this thing, but take the advice and judgment of some prudent and discreet person or other, that you may do nothing but what is according to law. I was never at all concerned, nor knew any thing of the business but what I heard from Mr. Braddon at first. And before he came into my chamber, I knew nothing of his coming; and I writ this letter, because he should not concern himself without the advice of some person that I thought was able to advise him, that he might do nothing that might bring him within the danger of the law, or reflect upon the government.

Just. *Holloway.* And you advised him to go by the name of Johnson, not Braddon.

Speke. It was late at night, and I had been at the tavern drinking a bottle of wine or two with a friend, and might not so well consider what I did write.

L. C. J. But, Mr. Speke, You hear what you writ, "We row against stream, and we thank you for the countenance you have given to us. And here is a worthy gentleman, Mr. Braddon, who is a very proper man for the design he has in hand, and none better than he, and when you are with him, you may discourse freely; and he is a true man, and a stout man, and fit to be trusted; but he must not go by the name of Braddon but of Johnson."

Speke. My lord, the reason was, because he was not personally known to sir Robert Atkyns; and for him to go down directly, and to have it reported, one of such a name came to sir Robert Atkyns, who was a man that had retired himself into the country from all public concern, I thought not so well.

L. C. J. Why did you trouble him, if he was so retired?

Speke. I had particular concerns of my own, that sir Robert Atkyns was pleased to concern himself for me, and I knew him a prudent man, that would advise him nothing but according to law.

L. C. J. You should not have disturbed him in his privacies, Mr. Speke.

Speke. My lord, I never was any other way concerned, I knew nothing of the matter.

L. C. J. You had done well if you had not concerned yourself about it at all.

Sol. Gen. "Most here do fear," you say, "that he will be either stabbed or knocked on the head," and therefore you lent him your man to guard him I suppose.

Speke. He desired me to lend him my man, because he did not know the way so well himself.

Sol. Gen. But why was there such fear about him?

Speke. I know nothing at all of the matter, but what I had from Mr. Braddon.

L. C. J. Ay, we live in such a stabbing age, that such an extraordinary gentleman as Mr. Braddon, that is such an extraordinary good Protestant, can't walk the streets for fear of being murdered.

Speke. My lord, I writ it such a time of the night, after I had been at the tavern, that I knew not well what I writ.

Just. *Withens.* Mr. Speke, You see what a sort of a man he is, upon the evidence that hath been given.

Speke. Truly, my lord, I never knew any thing, but what I had from him.

Sol. Gen. But to make the country believe, that there were such endeavours here to stifle any thing that might give light into the murder of the earl of Essex, there must be great caution used to conceal his name.

L. C. J. Yes, being such a virtuous man, as Mr. Braddon, there was great need of all circumspection and care to preserve him: Why did not he get his life-guard to keep him from the danger that was thought so near him?

Sol. Gen. They had not raised them as yet, but he was contented at present with Mr. Speke's man.

Speke. My lord, I am wholly innocent in all this matter.

L. C. J. Would to God you were innocent. You are a man of quality, Mr. Speke, I know; I should be glad you were innocent with all my heart. But when men forget their studies and their own business, and take upon them the politics without being called to it, that puts them into frenzies, and then they take all opportunities of shewing themselves men of zeal.

Att. Gen. We need but read the letter which Mr. Speke has owned, and you will say it is ten times worse than what Mr. Braddon has done.

L. C. J. Nay, I will not have Mr. Braddon topped upon for all that, I assure you.

Att. Gen. My lord, if you read it once again, you will find, that he therein owns it all, and pins the basket upon himself.

L. C. J. Indeed, Mr. Attorney, I will not have such a reflection put upon Mr. Braddon, That any man should be a greater actor in the business than he.

Speke. My lord, I writ it at night after a bottle of wine, and other people may be mistaken as well as I.

L. C. J. If some of these gentlemen, that now and then think themselves better-headed than others, and that are so extraordinarily concerned to preserve our religion, but are generally much mistaken, were, and I observe their mistakes are always on the wrong side; I wish you could have gone and recollected yourself next morning, Mr. Speke, and then the mistake had been more pardonable.

Speke. I writ nothing as to matter of fact, but what he told me, and I could hardly recollect it next morning, when he was gone away.

Mr. *Recorder.* My lord, we shall prove he has bragged, that is, Mr. Braddon, That he was the only inventor of the Protestant Flails, an instrument you have heard of, gentlemen, and for what use designed.

L. C. J. But, brother Jenner, that is nothing to the purpose now, what he was before this business, or what he was after. You are, gentlemen, to try him upon this indictment only, and are not to mind any other thing at all.

Then Mr. Speke's Letter was read again.

Att. Gen. You see gentlemen, in what strain it runs, 'we' and 'we'; he makes himself a considerable party in the design.

L. C. J. Ay, 'we' thank you for your kindness towards 'us,' and 'we' hope to bring on the trial of the earl of Essex, before they can any of those in the Tower.

Speke. He told me, sir Henry Capell said it was a thing too great for him to meddle with. And I knew nothing, but what I had from him.

L. C. J. He was a man of integrity, and could tell you nothing but what was true, Mr. Speke.

Mr. *Wallop.* My lord, All I can say for Mr. Speke, is this, He did believe Mr. Braddon's grounds, as he told him, were probable to go upon, but he knew nothing himself, and concerned himself no further. I hope the jury will consider of it, that there is no contrivance proved against him.

L. C. J. Nay, Mr. Wallop, though we interrupted you in making remarks upon every witness, yet now make what remarks upon what hath been said, that you will.

Mr. *Wallop.* My lord, I shall leave it to your lordship and the jury, how far they think the defendant guilty of this information.

Att. Gen. My lord, We have indeed given as great an evidence as ever was given I think of any offence. But to clear up the matter, that it was impossible for any man, unless the most maliciously and villainously inclined against the government and peace of the kingdom, that can be, to imagine such a thing, much less spread such a report, we will call you two or three witnesses to prove, that the earl of Essex murdered himself.

L. C. J. It is necessary, Mr. Attorney, I think, for you so to do, to satisfy the world, though to a discerning eye there is enough given from the evidence this day, to make it appear to be a most malicious and scandalous contrivance, to hawk about for every idle rumour, to pick up children of such tender years, and make them swear to any thing to serve a turn.

Att. Gen. My lord we do not call these witnesses, as if there were any doubt of it in the world.

L. C. J. But we live in an age, when truth passes for nothing in the world, and swearing and forswearing is taken for a thing of course. Had his zeal been half so much for truth as it was for falshood, it had been a commendable zeal. But when men are so zealous and fierce for such vile things as these are, it is time, of my word, for the government to interpose.

Att. Gen. It is not to satisfy the court nor the jury, who I believe are all of them already sufficiently satisfied, but it is to satisfy the world, that may have entertained some prejudices from this conspiracy. Call Mr. Bomeney in.

Sol. Gen. Not as if there were any doubt, whether Mr. Braddon were the malicious inventor of this report at the beginning, and went down into the country to spread it. The evidence has been full, and by his own management of his defence, he has proved it himself, and seems by his confidence to justify it. But we shall, to give the world some satisfaction, call some that waited upon the earl in the Tower, and others that saw him when dead, that will give a confutation to any thing that could be supposed, as if my lord of Essex had not murdered himself.

Then *Bomeney* was sworn.

L. C. J. Did you wait upon this unfortunate gentleman, my lord of Essex?

Bomeney. Yes, my lord.

L. C. J. Well, what do you know of his death?

Bomeney. I went with him from Whitehall, and I stayed with him all the while he was in the Tower.

L. C. J. How came he by that unhappy end, pray?

Bomeney. When we were at his lodging, my lord used to call for a penknife to cut his nails of his hands and feet, and he then had long nails, and said to me, give me your penknife to cut my nails; said I, my lord, I have none, I came in haste, but I will send to morrow for one; and therefore I sent our footman, one William Turner; to whom I gave a little note for provisions, and among other things which I writ directions to the steward to send, there was a little line; 'Pray send a pen-knife for my 'lord.' He brought some provisions, but he did not bring a pen-knife on the Thursday, because he said he had none, but he would send one the morrow after; I sent William Turner, the morning after very early, and gave him another little note for provisions; and, among

other things, I writ in the note, 'Do not forget 'the pen-knife for my lord.' He went, and when he was in the way, my lord sent the warder to me, to call me. I came to my lord, and my lord asked, Is the footman come? Has he brought the pen-knife? No, my lord, said I, but I hope he will not stay long, because I sent him early. Then I was turning to come down from the chamber, and I saw my lord walking in the room, and picking of his nails with the pen-knife—

L. C. J. How? With a pen-knife?

Bomeney. No, with the razor that I gave him. For I went to my lord, and when my lord asked me if I had gotten him a pen-knife, I said the footman was not come, but I hoped it would come immediately, because I sent him early. And I was turning from the chamber, thinking I had done with my lord, and my lord called me again, Hark you, Bomeney, said he, I can do it with one of your razors. My lord, said I, I will fetch one, so I went into my closet and fetched one. And I went to my lord, and when he had it, he did as if he picked his nails with it, and was walking in the chamber. I looked a little while upon him, and turning out of the chamber into the passage, where I talked with the warder, Russell his name was, and when I looked out of the window, his majesty was in the Tower, and there was a great bustle in the street; and when I had talked a little while with the warder, I went down into my closet again, and at the same time that I was in my closet, there came the footman, and one with him that brought the provisions, and he gave me the pen-knife, and gave me a little note, that he had brought with the provisions, which, he said, Mr. Billingsly, that was our steward, bid me to shew that to my lord. I took it, and went up to shew it to my lord; I found nobody in my lord's chamber, there was a closet there, in which was a close-stool, and that I found shut, and thinking my lord was there, I would not disturb my lord, but came down again, and staid a little while, in so much as I thought my lord by that time might have been come out. I went up again, and found no body in the chamber, but the closet-door shut still, I went against the door, and knocked three times, and said, My lord, my lord, and nobody answered: then I looked through the chink of the door, between the door and the wall, and I could see blood, and a little part of the razor. Then I called to the warder, and the people of the house, and they came up and found him there.

Att. Gen. Had you much ado to open the door, or could you open the door easily?

Bomeney. No, the door could not be opened easily, I know not how they opened the door, but I think Russel the warder, when he came up, pushed at the door, but could not open it very far, because my lord's foot was against the door, and so they had much ado to open the door.

Att. Gen. Which way does the door open, out of the room, or into the room?

Bomeney. Inward, into the room.

L. C. J. And so his feet being against it, it could not easily be opened.

Att. Gen. How big is the closet?

Bomeney. A very little closet, I believe no wider than that; and the length of a man, and a close-stool at the upper end would fill it up. My lord lay all along on his side.

Att. Gen. Did you observe your lord melancholy, Mr. Bomeney?

Bomeney. Yes, he was melancholy. But we took no notice of it, for he was used to be so, and we had no reason to suspect any thing more than ordinary.

Att. Gen. Did you find the razor?

Bomeney. Yes, it lay by him.

Att. Gen. What became of the razor?

Bomeney. The coroner's jury had it.

L. C. J. Was there any window in that room, where the close-stool was?

Bomeney. Yes, there was a window.

L. C. J. Was there a casement to that window?

Bomeney. Yes, I think there might.

Just. *Withens.* Which way does that window look?

Bomeney. I cannot very well remember, my lord.

Just. *Withens.* Which way do you think?

Bomeney. I believe it is upon a yard.

L. C. J. He says he does not well know. But, Mr. Bomeney, you saw Mr. Russel the warder in the same place, as you came up again, that you left him in when you went down?

Bomeney. My lord, I went down but a little while.

Sol. Gen. Where did you find Russel the warder, when you came up again?

Bomeney. At the guard.

Sol. Gen. Did you find him in the same posture, when you went up again, that you left him when you went down?

Bomeney. Yes.

Sol Gen. Did you hear of any body that went up else?

Bomeney. No, my lord.

Sol. Gen. Then we will call Mr. Russel the warder he speaks of. [Who was sworn.]

Att. Gen. Pray will you give my lord an account at that time where you were, and what was done?

Mr. *Russel.* I was in the chamber, next opposite against my lord's chamber, there is but a little step betwixt the doors, the stairs come up betwixt the two doors, no body could pass backwards or forwards but I must see them; for I was then waiter at that time, and stood upon the guard; and my lord asked Mr. Bomeney, whether the pen-knife was come; and he told my lord, no. Then says he, lend me your razor, that will do it. And my lord took the razor in his hand, and the door was open and he went two or three turns in the room, with the razor so. This I saw, the door being open, as I stood in the passage. My lord, by and by Mr. Bomeney goes down, and my lord

shut the door to him, and Mr. Bomeney staid below a little while, and afterwards comes up again. And my lord was gone to the closet to stool, as he supposed. So away he comes down again, and staid about a quarter of an hour, or thereabouts. And this I see all myself, my lord.

L. C. J. Had any person been there, from the time Bomeney went down, to the time he came up again?

Russel. No, my lord, there was no body went up or down all the time, but Bomeney. He came up, and seeing my lord was not come out of his closet (this I did stand and hear) so he puts by the hanging, and looks in, and sees my lord in his blood, lying in the closet; and he makes an oration, a great noise; with that I stepped two or three steps, hearing him make such an oration, and I found the key was on the outside of the door, and I opened the door, and saw him lie in his blood.

L. C. J. Could you open the door with ease?

Russel. Yes, I could put it a little way open, and there saw him.

L. C. J. But you could not put it quite open?

Russel. No, for his legs lay against the door.

L. C. J. Was it a narrow closet?

Russel. Yes, a very narrow closet.

L. C. J. In what posture did my lord lie?

Russel. He lay all along on one side.

L. C. J. Where lay the razor?

Russel. By him. But I did not take so much notice of the razor, for I was surprized with the sight.

Just. *Holloway.* Was there any window in the closet?

Russel. Yes, that looks into captain Hawley's yard. And the window is quite northward.

L. C. J. Which way does that window look?

Russel. Quite the other way, into the back-yard.

L. C. J. Then there is no way out, nor light, nor casement out into the fore-yard?

Russel. No, my lord, it is backward, and it is paled in, only into the house there is a door.

Att. Gen. Was there any door out of the street, that way?

Russel. No, there is one door that goes out from the entry to go into the yard.

L. C. J. Has any body else access to come to the yard, but what must come through Hawley's house?—*Russel.* No, nobody.

Sol. Gen. We will call captain Hawley himself.

L. C. J. Warder, do you remember there was any coach that stood there?

Russel. No, there was no such thing.

L. C. J. I ask you for this reason, because here was a girl that spake of a coach, that came through the house I suppose, and so through the entry out of that door into the yard.

Att. Gen. Where is Lloyd the soldier? for, my lord, as there was a warder above, so there was a soldier that stood at the door below. And while he staid there, there could not any one come in, nor near, but he must observe them.

Sol. Gen. Pray, my lord, be pleased to ask Mr. Bomeney, how long he lived with my lord?

L. C. J. How long had you lived with my lord of Essex?—*Bomeney.* Six years.

Just. *Withens.* You waited on him in his chamber, I suppose?

Bomeney. Yes, in the nature of his *valet de chambre.*

Then *Lloyd* was sworn.

Mr. *Recorder.* Hark you, Lloyd, you were the sentinel. Give an account where you stood that day that my lord of Essex murdered himself?—*Lloyd.* At my lord's door.

Att. Gen. Which door?

Lloyd. At my lord of Essex's door.

Att. Gen. Were you above stairs, or below at the street door?

Lloyd. Below at the street door.

Just. *Withins.* Did any body come into the house that morning?

Lloyd. Nobody came in, all the while I stood there, that I knew of.

Just. *Withins.* Were you there at that time when my lord killed himself?

Lloyd. I was there when the noise was made of it above stairs.

L. C. J. Did you ever see a coach there?

Lloyd. Not to stand at the door at all.

L. C. J. Didst thou see ever a coach in captain Hawley's back-yard?—*Lloyd.* No, no.

L. C. J. Why, could not the coach go through the door and the entry into the yard?

Sol. Gen. Had you seen my lord of Essex that morning?

Lloyd. Yes, he spake to me, and asked me what o'clock it was?

Sol. Gen. Where was he?

Lloyd. At the casement.

Sol. Gen. What did he say to you?

Lloyd. He said, Centry, What o'clock is it?

Att. Gen. Did you see him when my lord Russell went by?

Lloyd. Yes, I saw him then.

Att. Gen. How long after was the cry of my lord's having killed himself?

Lloyd. I believe, not half an hour after.

Att. Gen. Did any maid go out of the house?

Lloyd. None at all.

L. C. J. What, not in a white hood?

Lloyd. No.

L. C. J. Why, didst not thou call to the maid to come and take up the razor, that was thrown out of the window of captain Hawley's house?

Lloyd. There was no razor at all thrown out, that I saw.

L. C. J. Did not you open the pales for her to go in, and take up the razor?—*Lloyd.* No.

L. C. J. Was there any other soldier there besides you?—*Lloyd.* No.

L. C. J. Then you must be he that cried out, or nobody?

Lloyd. I saw no razor, nor did not cry out to any body.

Sol. Gen. Could you open the pales? Is there a door to the street-side, out of the pales into the yard?

Lloyd. It is no yard, but there is a door that all pass through that come to the house.

Sol. Gen. What else did my lord of Essex say to you?

Lloyd. He only examined me, what o'clock it was? That was all.

Att. Gen. My lord, We have here two women, who were the only women that were in the house, they will tell you what they saw.

L. C. J. Pray, gentlemen, do not misspend your time unnecessarily, because I am to sit this afternoon at London.

Att. Gen. My lord, We will then only call captain Hawley. [Who was sworn.]

Sol Gen. Pray, Captain, tell what you know of this matter?

Capt. *Hawley.* My lord, All the account I can give, is, that about four or five o'clock in the morning, I went to open the gates, that being the usual hour to open the gates. And I was at the gate then when a warder came, and told me, my lord of Essex had killed himself, and that was between nine and ten o'clock. When I came into the house, I went up stairs, and saw nobody in the room, nor no blood; said I, to the warder, what, do you make a fool of me? Here is nothing: says one of the warders, look into the closet; I went to the closet, and could not open the door above this wideness, and I looked in, and saw the razor all in blood, and my lord lay on his arm in this fashion. I could not tell, whether he was dead or no, but I thought it was not my business to stir him. Then my lord Constable was ordered to come and secure, and examine all the servants.

L. C. J. Pray, Captain Hawley, where does the casement look into?

Capt. *Hawley.* The house, ever since I came to it, is just as it was; and the house having settled, the casement won't open above thus far: and it is so low, and the pales are nine or ten foot high, that it is impossible for any one to throw any thing out of the window, three foot hardly. It is one of the horridest reports that ever was heard of, and the unlikeliest thing, they cannot throw any thing out of the window to be seen.

Att. Gen. My lord, I think it is not necessary to call any more witnesses.

L. C. J. Have they any thing to say further, on the other side?

Mr. *Speke.* I desire, my lord, to call my man.

L. C. J. Call your man, for what purpose?

Speke. My lord, If your lordship pleases, I will call my man to prove, that I knew nothing of Mr. Braddon's coming to me.

Then Mr. Speke's man was sworn.

L. C. J. Ask him what you will.

Speke. Did you ever see Mr. Braddon with me?

Servant. Never but once, before that time he came to my master's chamber, which was the night before he went out of town; and when he came, after he had been there a little while, my master ordered me to get me ready to go into the country with him. And after I had been with him a little time, he got another to go with him, and sent me home again.

Speke. I was going to bed, was I not?

Servant. Yes, you was.

L. C. J. Have you done of both sides?

Speke. Was it not a surprize to me, when he came to me?

L. C. J. How does he know that?

Speke. I tell you why, my lord, I ask it: because when I go out of town, I always tell him to prepare himself.

Servant. It was a surprize to me; I knew nothing of it.

L. C. J. Well, have you done now? Have you a mind to say any thing to the jury, you that are of counsel for the defendants; or you, Mr. Braddon?

Mr. *Braddon.* No, I will say nothing.

L. C. J. Have you, Mr. Speke?

Mr. *Speke.* My lord, I have proved it here, that I had no hand in what I am accused of. It is put down in the information, that I conspired with Mr. Braddon, to endeavour to procure false witnesses. I have proved I never had any hand at all in any thing of it. It was an accidental thing, his coming to me; and it was a great surprize to me, when he came; and I never concerned myself in it more, than the writing of that letter: and I had no ill intent in it; I did it not designedly, for I knew nothing of his coming; and I had not writ the letter if he had not come to me. And it is plain, it was a surprize, for I always give my man notice, when I go out of town, before-hand to prepare himself. I thought nothing at all of ill in the letter: I writ it late at night, when I had been with some company at the tavern. And he made me believe that to be true, which was not; I hope the gentlemen of the jury will consider that. I have nothing to say of the thing, I did not concern myself in it any further at all, than writing the letter, which I did not well know what I writ.

L. C. J. Well, have you any more to say, Mr. Speke?—*Speke.* No, my lord.

L. C. J. Have you any more, Mr. Braddon?

Mr. *Braddon.* My lord, I have only this to say for myself. It has not been proved directly, or indirectly, that I used any evil arguments to persuade these witnesses to testify what was false; but I dealt with them with all the candor, that any person in the world could use; and used all the caution that I could, to hinder them from speaking any thing that is false. There has been nothing proved of evil practice used by me; and I desire the gentlemen of the jury to take no other notice of any thing that has been, or shall be spoken, but what has been proved.

L. C. J. Gentlemen of the jury, the evidence has been very long, that has been given both for and against the persons, against whom this information is exhibited. It is an information exhibited by the king's attorney-general, in his majesty's name against Lawrence Braddon and Hugh Speke. And the information does set forth, that the late earl of Essex murdered himself in the Tower, and that thereupon there was an inquisition taken before the coroner, that did find that he had so murdered himself, he being before that time committed for high-treason, in conspiring the death of the king, and levying war to disturb the government. And these persons did render that inquisition, as though it had been fraudulently and irregularly obtained; and also to breed ill blood, and spread false rumours among the king's subjects, by endeavouring to persuade them to believe, that the earl of Essex was murdered by some other hand, and had not murdered himself, and had procured false witnesses to testify some such matter, in order to the spreading about that false rumour. This is the substance of the information. To this information they have both pleaded, Not Guilty; and the evidence, as I was telling you, has been somewhat long; but according to the best of my memory, and for the assistance of yours, I will mind you of as many things, as occur to me, that have been said against them, and what has been said on their behalf, I mean so much of it as is evidence. For I must tell you, all hear-says and common discourses of other persons are not evidence, and I will give you that reason, that is sufficient to satisfy any man that is unbiassed, that if in case the person that so told the story had been here, if he had not told it upon oath, you could not have believed that person: therefore, surely there is less credit to be given to him, that tells a tale out of another body's mouth. And I tell you this, because there have been great allowances given, and ought to be when people are accused of such great and weighty crimes; for these are monstrous crimes that these gentlemen are accused of; but it is you that are to try, whether they are guilty or not: certainly there is scarce in nature a greater crime that can be committed, than this that is now before you; for I think robbery or any other such felonies, are not such monstrous crimes in their true real weight, though in consideration of law, in respect of punishment they are greater; yet in point of crime, they are surely less; for to spread false reports, in order to raise sedition, ill-will, heart-burnings, and jealousies in the king's subjects against the government, and to suborn witnesses to that evil purpose, is surely a much greater crime than robbing on the highway. Now, gentlemen, it is not unknown to most of you, what endeavours have been of late made, to possess the minds of the king's subjects of great injuries designed to be done them by the king, or his authority: and in order to foment differences and misapprehensions between the king and his people, and among the people between one and another, all arts have been used, to proscribe people that they are minded to expose. Those, they bear ill-will to, must be called Papists, or Papists in masquerade; but they and their confederates are the sober party, the true Protestants, as if there were none sober or true Protestants but such as are factious and troublesome in the government. But by these things they bring an odium upon the name of a Protestant, their aim is by distinguishing to divide us; whereas if they were Protestants in truth, the Church of England Protestants, they would have another behaviour, they would learn to obey, and submit to authority, and not go buzzing from house to house, and spreading false reports, 'but study to be quiet, and do their own business.' And, though Mr. Braddon made use of the 5th chapter of the Acts, to the child, he would have done well to have taken notice of some other parts of Scripture, that are as much Scripture as that, that injoin obedience and submission to the magistrates; and, being quiet and minding his own business, it is odds, he had never come to that trouble, he is now likely to meet with. But the crime he is accused of carries all the venom and baseness, the greatest inveteracy against the government that ever any case did, that I have met with. For it is insinuated, that, because the king and the duke were walking in the Tower, that day, and near that time, when this unfortunate thing happened, now it must be whispered, as though the king and the duke had designed this murder. How base? How devilish and hellish a design is this? But yet, this must be spread about, and endeavoured to be distilled into the minds of the king's subjects. But besides, gentlemen, you are to consider, as was opened by the king's counsel, to what this thing tended; for inasmuch as there was an horrid bloody conspiracy, to take away the life of the king, and of his dear brother, his royal highness the duke of York. And forasmuch as several persons have been duly executed for that conspiracy, who were concerned along with this unfortunate lord; (I cannot help the naming of it, though I am sorry for his misfortune, for the sake of that honourable family) but rather than he would abide his trial, God knows what other reason he had, but the probability of the thing speaks it, he being conscious, the great guilt he had contracted, in being concerned in such a conspiracy, made him destroy himself. And it is easy to imagine, how far that might prevail upon him, it being done immediately after my lord Russell, who was one of the conspirators with him, was carried to his trial. It cannot be thought, but it was to prevent the methods of justice in his own particular case. And, gentlemen, there was *digitus Dei* in it, and it is enough to satisfy all the world of the conspiracy; though we live in an age, wherein men are apt to believe only on one side; they can believe the greatest lie, if it makes for the ad-

vantage of their party, but not the greatest truth, if it thwarts their interest.

But because Mr. Attorney has produced his proofs to manifest, that this lord murdered himself, I will take notice a little of it, because it may have some good effect to undeceive some that have been imposed upon. Not for my own satisfaction, I thank God I am satisfied, and so I believe are most honest men: but that silly people may not be imposed upon by every busy fellow for the future, that takes the liberty to run about and spread false news, and that men may be aware of such fellows, and may not be decoyed any more by such false pretences; it was therefore fit that evidence should be given of the truth of the fact, that that gentleman did murder himself. And the evidence is this.

Besides the inquisition, which was taken upon the oaths of several persons of quality, (as you hear upon the reading their names, several of them were esquires and men of note) it is here also proved by the testimony of his servant that attended him, how he came to this untimely end. And gentlemen, I would observe, it is sworn by his servants, one that had lived six years with him, not an upstart, or a wandering fellow, but one whose integrity and fidelity to my lord was confirmed by six years experience of his service. Then here is the warder that was at the door, here's the soldier, here's the master of the house, who are all the persons that probably can give any account of the matter, and they tell you positively that no one did go up and down, but this Frenchman, who was his valet de chambre. And the warder tells you, That he coming to the door, and knocking at the door, and hearing no one answer, did endeavour to open the door, but it was so fast by my lord's feet, that he could open it but a little, and looking in, discerned blood, and that made him make acclamations, as the warder calls it, orations, which brought all the people in the house thither, and they gave the same account that he does.

And it is likewise fit to be taken notice of, that the window of this closet looks into a private yard, where no strangers usually come, and where no coach could come; and that the pales were so high, that in case a man were desirous to throw any thing out, it were impossible to cast it above three foot. And if there could no coach at all come into the yard, as it is plain there could not, (for there is no door, save only a back house-door) then this must needs be a lie that was spread abroad. And it is beyond all peradventure true that my lord of Essex did murder himself.

Now to have so great a truth as this to be perverted, and to reproach the government with falsities, is the most malicious thing in the world. If in case the law has made it penal for any man to scandalize any one private person, as it has; and if it be by law much more penal to scandalize a nobleman: how much more ought it to be, when the king and the whole government is thus scandalized?

Now to come to the fact, as near as I can recollect, I will give you an account of what evidence has been given of the one side, and of the other. But this I thought fit to premise, because, there will some circumstances fall out fit to be taken notice of in the evidence, especially about the window in captain Hawley's yard and house, which may be cleared this way.

In the first part of the evidence for the king, they call a witness to prove the earl of Essex's commitment, which is part of the inducement in the information.

But for the information itself, there is this evidence. First, Evans, he comes and tells you, how that he had heard at the Custom-House from Edwards, the father of this boy, as though there had been a report came to him from home, at ten o'clock that morning my lord Essex cut his throat, of a razor thrown out of my lord of Essex's window; that he came to him in the afternoon again, and in the afternoon told him he had examined the matter further, and his boy confirmed the truth of it. He says, That after this, Mr. Braddon and another man, one Mr. Hatsell, if I am not mistaken in his name, came to the place where he was in Essex, and there they had some discourse about my lord of Essex's death, and there Hatsell took out of his pocket a printed copy of the inquisition; and Mr. Braddon was then in the room, but he says he thinks Mr. Braddon at that time took no manner of notice of it, but walked about the room; but he says the inquisition was read while he was in the room, and Evans said something about the report he had heard, which did seem to contradict that inquisition. But some time after, he says, That he being at the coffee-house, Braddon and Edwards came to him in the coffee-house and there they began to talk; Edwards said, That Braddon had been with his child to examine him, to bear testimony about flinging the razor out at window. He was very full of the word [matter] and tossed that to and fro, but at length the substance of his matter was, that report of the boys, and he advised them to forbear talking any farther to him about the matter, for it might do Edwards and Braddon both an injury; and he had read the inquisition which was quite contrary. That was all he could say.

Then comes Edwards, and the substance of what he says, is this, That he first heard it from his family, and afterwards the boy confirmed the truth of it; but then afterwards he heard he had denied it, which was after Braddon had been there to inquire about it. And then he says Braddon came to him again, and then he had got a note dictated by himself and not by the boy, but at first he tendered it to the boy, and the boy refused to put his hand to it; and Mr. Braddon came again another time, (though he was told the boy had denied it as he heard) and then the boy did set his hand. This is the substance of what Edwards says. He does say indeed the boy used to tell lies very often,

to make excuses when he played truant, and that his family told him, the boy was often guilty of telling of lies.

Then the next evidence is the evidence of the boy himself. He it seems is thirteen years of age: certainly any man that had been of an upright mind and conscience, as Mr. Braddon pretends to be, and would have you, gentlemen, think him so, would have it thought that he was full of honesty and integrity to the boy, when he baited his hook with a text of scripture, about the danger of telling a lie, and, 'have a care, child, of telling a lie;' if he had done no more but given him this advice, it had been worthy of commendation: but when the boy had refused to sign it, for him to go and make such a stir, without examining further into the particulars, but only taking a slight report from such a child, and to make such a disturbance in the nation, and such a noise, not only here, but abroad, as this has done, sure argues neither uprightness nor conscience. Had the boy stood in it and persevered in it, it had become him in regard of the tenderness of the boy's age, to have been more inquisitive into circumstances, before he gave such credit to what he said, as to make all this ado.

But what says the boy when he comes here, he is now upon his oath, and he tells you, He did tell his mother so at first, and he did tell Mr. Braddon so at first; but afterwards when his sister spake to him, and bid him be sure to tell nothing but what was truth, then he said truly, it was not truth. He tells you, Mr. Braddon offered him the paper to sign, but he would not sign it; and being asked the question, Why he would not sign it; he says, because it was not true; and being asked, Whether Braddon had notice of this? The mother and sisters, all tell you, He had notice the boy had denied it.

How came Mr. Braddon, what authority had he to take this examination? He is no justice of peace, no magistrate that had any authority to take examinations. What concern had he in it more than other people? The boy could tell him there were abundance of people there besides himself, though it was a lie he told then, and that the girl told now. Why did not he stay to have it confirmed by some of those people? Why did not he carry these children before some magistrate or justice of peace, some body that had authority to take examinations? There was a spirit that prevailed with Mr. Braddon to engage and make a stir in this business, and you may easily guess what a kind of spirit it was which gave him this authority that he had not before.

Gentlemen, another thing is this, 'tis plain, and the boy now swears it directly, That whereas be put it into his information, How that he told him he was going to see my lord Brandon Gerrard's lodgings, but now he is upon his oath, he swears directly he never told him any such thing, and yet he hath put it into the paper he made him sign.

He tells you a second time, Mr. Braddon came to him, which was after the boy had refused and declared himself unwilling, and that then he was persuaded by Mr. Braddon, who told him there was no harm in it; if there be any harm, it would be to him, and not to the boy, and so by virtue of that, he insinuated himself, and got the child to sign that paper, which is every tittle of it false, as the boy now swears directly. And he tells you, how he was imposed upon by Mr. Braddon, pretending there was no harm to him, all the harm would come to himself, and by reason of these insinuations he was prevailed upon to put his name to that which was notoriously false.

The next witness (to make it appear that it was notoriously false, not only by the boy himself, but by other circumstances) is Hawkins the minister's son, Dr. Hawkins's son of the Tower. And he tells you, I played truant as well as he that day, and I saw the king and the duke at the Tower, and when I had seen them I went about as they did, and afterwards I went home, and there came a report, that my lord of Essex had cut his throat, which made me go back again to the Tower, and there was I a considerable time gaping among other people, and there did I see this boy Edwards; when he came there, I was there, I was there all the time that he was there, and we went out of the Tower together, and there was no such thing, nor any pretence or ground for such a story. And Edwards himself being asked the question, upon his oath, doth likewise say, Hawkins was with him all the time there. So that that shews not only by what the boy says, that it was false, but it is also proved false by the testimony of this other witness Hawkins.

Then next comes Mr. Blathwaite, who was present when Mr. Braddon was before the king, and what does he say? He says, there was the boy fetched and the girl fetched, and all persons examined there, and then it is told him, all the boy had said to him was false, and it was told him with all its circumstances. So that notice sufficient, if you will believe Mr. Blathwaite, was given to this Mr. Braddon, That the boy had denied it then, as he had before to his sister: so he knew it was false.

But what does Mr. Braddon do now? He is so far from being satisfied in the matter, that instead of stopping there, his zeal transported him to pursue it further: and so he tells you, that Mr. Braddon confessed he would have got some justice of peace to have the boy examined; and he applied himself to sir Robert Clayton, and sir John Lawrence. There were many justices of the peace besides them, in London, to whom he might have applied himself. But when he comes to sir Robert Clayton, and acquaints him with the matter, he would not do it alone; it was thought a matter of that importance. Then says Mr. Braddon you shan't do it at all. He must have the kindness of having it done in private; to have it examined when any body was by, was not so well for his purpose; which shews you still, gentlemen, his

design was to contrive privately, to effect that which the light should not easily discover.

Then the next thing is the evidence of Mr. Monstevens, and he gives you an account, that he came to him, and he read the information, and gave him a caution, that he wondered at him: says he, why do you concern yourself about this business, there is sir Henry Capell, he does not concern himself? then he pretended to come in his name; but at length, when Mr. Monstevens began to dispute it with him, why sir Henry did not appear himself in it? then truly sir Henry Capell was very ill, and could not possibly come himself, but I am to go to him, and give him satisfaction about what I do, and so also to the countess of Essex. No, says Mr. Monstevens, that cannot be, for sir Henry Capell is not so ill but that he has been with my lord Sunderland, and with the king too, since the death of my lord of Essex. To which he made him no answer. So that that was but an excuse and a subterfuge; but yet notwithstanding all this caution, he continues on his zeal in the thing: whereupon Mr. Monstevens brought him to my lord Sunderland, and what discourse has passed between them, he has given you an account of.

The next evidence is sir Henry Capell, who tells you, that Braddon comes officiously and tells him, he had some discovery to make about the death of the earl of Essex, and you hear that poor gentleman being related to this unfortunate noble lord, was at the first time very much under surprize, (being in such great affliction as one brother must needs be for another, nature obliges people to a great concern for such accidents) and he says, he is not able to give an account what he said or did at that time, or what Braddon did particularly say to him. But when he came the second time to him, he was a little more sedate and calm, and then (he does remember) he told him, If you have any thing of this nature to say, go to a secretary of state, it is his business to inquire into this affair, and it is not the business of every particular private man, because these are matters that concern the government. But Braddon pretended (forsooth) it was his zeal and his great conscience that made him to be thus transported, and to be so eager for carrying on this prosecution.

The next witness, Gentlemen, that you hear of, is the gentleman that seized upon Mr. Braddon in the country; and that is Mr. Beech, who brought him before a justice of peace (one Aires, that it seems is since dead), and in his pocket he found a letter from the other defendant Speke, which is the only thing indeed in the evidence that does affect that gentleman; and what that letter is, you have heard it read, and for your better satisfaction, because the language of the letter is pretty extraordinary, if you have a mind to have it to peruse while you are here in court, you may have it with you. I suppose you remember the substance of it, commending the great integrity, courage, and magnanimity of this gentleman, Mr. Braddon, thanking the person to whom it was writ, for his great kindness to him and his friends, how they did hope to be able to get the murder of my lord of Essex tried before any in the Tower could come to their trial; That the tide ran strong against them: And, pray, you must take notice, I have given him a hint he must go by another name, by the name of Johnson, and not by the name of Braddon? for alack-a-day he would be stabbed in these dangerous times, or knocked on the head, if he be known by his own name. Mr. Braddon would be thought a man so considerable in the world for his zeal for truth, and the Protestant religion, that there was very great hazard of his being murdered, we live in such perilous times.

Gentlemen, this is to amuse and affright people, and to put odd thoughts and jealousies and fears into the minds of the king's subjects, which was the beginning and rise of the late rebellion, which we have all reason to remember with horror; that rebellion that in the issue of it brought the late king of blessed memory to the scaffold: And therefore we must have a great care of such things growing upon us now.

And pray, Gentlemen, mind the style of the letter: 'We' have many thanks to give you, for your care of 'us,' and countenance you have given to 'us,' and 'we' don't doubt 'we' shall be able to carry on the business of the earl of Essex, notwithstanding that the tide runs strong against 'us:' 'We' hope this, and 'we' hope that, and t'other, and so makes himself a party. And he recommends him in particular to sir Robert Atkyns, to whom the letter was written, to advise him in the matter he went about, (which by the way, you see, was to pick up false evidence) to carry on this wicked design. And I must tell you, gentlemen, if Mr. Speke was given to believe a lie, and did write that letter, with a design to have that lie spread abroad, he makes himself a party, and he is as guilty in every circumstance as the other, as to the design in general laid in the information, though not equally guilty about the management of the witnesses: And it is the letter only that particularly affects him. But I tell you, if in case you think he was surprized in the thing, or did it ignorantly or innocently, without any concern, (though he seems to have a wonderful concern in his letter, and very zealous he seems to be in the prosecution of this business) you are to acquit him. But, if he did contribute to the design of spreading this false report, he is as guilty of that part as Mr. Braddon, though he be not guilty of suborning the witnesses. But the evidence against Braddon goes farther; There is not only the evidence of this letter, which speaks plain enough as to this design, but you find also about him all the informations that have been read. The information of this boy of 13 years of age; the information of the girl of 13 years of age: There was also taken in his pocket a letter from one Burgis, a famous pin-maker, of Marlborough, written to one Cumpen a postmaster at Frome, in this manner: 'Pray call to mind such a

'business of hearing such a report of my lord 'of Essex's cutting his throat upon Friday the '13th of July last. Pray recollect such a 'thing, and impart it to this gentleman the 'bearer.' This likewise was intrusted with Mr. Braddon: but it seems the man had gone and writ this letter, and had put in the 6th day, which happened to be a week too soon, and this must be rectified by Mr Braddon himself, he being a great companion of Mr. Braddon's; for it seems he had such a confidence in him, that upon his report, he came down from London to Marlborough, though now indeed they pretend they never knew one another before; But it is proved he confessed he had such a regard to his report, that that brought him down from London. He had (as I was saying) put it down the 6th at his first writing; and I believe as to the thing itself, it was as true the 6th as any other time, and the 16th and the 26th is all one to such people. And this letter, he tells you himself, was written six weeks after, but Mr. Braddon must correct it: No, says he, you mistake, it must be the 13th, it must not be the 6th; the 6th would not do the business, for the 13th was the day that he was murdered, and so he was forced to interline it, the 13th, to make it to humour the story; for the lie would not pass so well if it had been put upon a day so long before; but to make the lie a correct lie, and to humour the rest of the evidence, Mr. Braddon comes and informs him, it must be the 13th.

That was the next piece of evidence that was given, and I think the substance of the evidence of the whole matter given against the defendants for the king, except it be some remarks out of the evidence that has been given on the other side, which it will be material for you to take notice of.

Now, Gentlemen, for the defendants, they bring this evidence:

First, They bring a man, I think his name was Lewes, to whom they gave the money before he would give his evidence. And he says, one day he was going up a hill, near Andover, and going up the hill, he heard the news of my lord of Essex's cutting his throat; but what day, week or month it was he cannot tell, that he heard this. And, gentlemen, let me tell you, it is as bad as the case itself, and worse if possible, the endeavouring to pick up witnesses to put a colour and countenance upon so black a villainy as this is. Then the next evidence is Fielder, and he tells you, that at their town of Andover, the Wednesday before my lord murdered himself, it was all the talk about the town, that he had cut his throat; it was in every body's mouth, the market people, men, women, and children, all over the town had it, when the earl of Essex did it not till the Friday following. We asked him to name any one; no truly he could not, the town was so full of people, and yet he cannot remember one, whence he had it: but, gentlemen, here is the malicious design of the matter. It is to make it believed it was a designed business to murder my lord, and cast it upon himself, and they knew of the design at Andover, two days before the fact was done; as though the persons that designed to murder him, would go to make it public, as such a report was likely to do. But the design of this, besides the falsehood and baseness of the thing itself, does speak malice and sedition, and all the distempers of a disloyal man's heart, and to go about to get witnesses to support the credibility of a thing that is notoriously false, is ten times worse than the spreading of such a report itself.

Then comes Mrs. Edwards the mother, she is the next witness, and she tells you at first, the boy did tell this strange story, but afterwards denied it; but she likewise tells you, how Mr. Braddon came, and how he dealt with the boy. He is a busy man, you see, a great reformer, that does mightily concern himself in the reformation of the government. I never knew that Mr. Braddon had any great share in it: he has not such a prodigious estate I suppose, that for fear of losing his great estate he should be so wondrous busy and active in reforming the government; but I have always observed it for a rule, that your beggarly inconsiderable fellows are the warmest people in the business of reformation, and for defending liberty and property as they call it; and then they put it under the disguise of religion, when, alas, those that have no religion are generally the greatest pretenders of taking care of it; and those that have no estates nor properties, are usually the fullest of noise about liberty and property. But the meaning of it is plain, if they can but exasperate the people into a rebellion, that is the way to get a property: and if they can but have liberty to do what they please, that is all the liberty they contend for. They are such mean inconsiderable fellows only that make all this ado among us: for no persons of any interest or quality will offer to engage in any such thing. But I hope the snare is seen, and we shall avoid it; for God be thanked we live under a regular government, where the laws are duly executed; we need not be afraid of wrong from the government. The courts of justice are open where they may have security; and the best security to good subjects, is that which the law gives them.

Mrs. Edwards, she tells you, when Braddon came to enquire about it, it made them all a little concerned; and the daughter was affrighted, and she comes to the boy, and says, Billy, Billy, here has been a man about such a thing, pray speak the truth: why, says he, will any harm come of it; says she, I cannot tell, but tell you the truth. And then when the boy comes to tell truth, he then says, all the story was false. Besides this, says she, we told Mr. Braddon, before the boy signed it, that he had said it was false; and he was told it again before the king and council, that it was false. But nothing would serve him but he must have a horse and a man, and he must go his circuit to pick up ridiculous stories.

Letters must be contrived from one to another to give a colour to the matter, and all this to spread about his malicious reports and false news.

And by this means, Gentlemen, I must tell you, the matter is fixed as to the second part of the information, which is the corrupting of witnesses; for though he did not get any witnesses sworn, and so it is no subornation of perjury, strictly, yet however it is a misdemeanor to labour any one, much more such a child, into a falsity, as apparently he did; for as the boy swears now, he never did make mention of going to my lord Gerard's lodgings.

The next evidence is young Mrs. Edwards, Sarah the daughter, and she comes and gives an account of the same. That the boy did tell such a story at first, but, says she, I knew him to be such a lying boy, and I had so often found him in lies, that I did not mind what he said. And he used to tell lies when he had been playing truant. Then comes Mr. Braddon to enquire about the business, and when he began to prosecute it, the girl began to be affrighted, and she calls the boy to her, and engaged him to tell her the truth, and then immediately upon that he did say it was all a story, and invention of his own.

And then it is very material to observe that the boy in that paper of information (which is all of Mr. Braddon's hand-writing) makes the circumstance of the razor's falling down, to be cast of the inside of the pales, and the girl says, it was of the outside, and there was a coach, and abundance of people by, and a great many fine circumstances, and not one of them true.

The next piece of evidence is, she does say, that after he told her it was false, she gave notice to Braddon, and being asked, whether she did not frighten him by threatening his father would be turned out of his place? She swears, No. But all those kind of questions were by a side-wind, to make reflections upon the government; as though the king would turn men out, because they would not swear what was false. It carries, I tell you, a sting towards the government still, and shews the malice of the design. But, gentlemen, you hear what is said about that, there was no such thing said; they did apprehend some fear, but from whom their fear came, that they cannot tell. But she positively swears, when the boy had denied it, he had notice of it; and when he refused to sign it, yet he pressed him, by telling him, there was no harm in it like to come, but only to Mr. Braddon himself, and so he was persuaded to sign it.

The next witness is Mrs. Barton; she comes and tells you, that she was at Mr. Edwards's house, and what she tells you of her own knowledge, you are to take for evidence, and nothing more. She says, Braddon did engage the boy to tell truth, and put him in mind of that chapter in the Acts, of the great displeasure of God against the two witnesses that forswore themselves, and bid him speak nothing but the truth. And after he had talked thus awhile, she observed he was going to take pen, ink, and paper, and she was afraid she might be drawn in for a witness, and so she went out of the room. But before that time, Mr. Braddon did go to see the window, and the place where the boy said the razor was thrown out.

Then there is the evidence of the little girl, who is the next witness, Jane Lodeman, I think her name was, and that is likewise written by Mr. Braddon. Now you hear what that young wench says. She comes and would give some sort of countenance to the thing, how she was looking up at the window of my lord of Essex's lodgings, and that there was a bloody razor thrown by a hand out of the window, but whether it was half bloody, or all over bloody, she cannot tell, but bloody it was; and it was, as she says, thrown on the outside, though the boy said, it was thrown of the inside. But the wench being asked, whether she knew that was my lord of Essex's lodging? She answered, No, she did not, when they come and make her swear in her information, that she saw the razor thrown out of my lord of Essex's lodgings: and then she says, she heard no soldier speak a word at all; but in the information, it is set down, that the soldier cried out to the people of the house, go fetch up the razor. And this was all done in the open day, and there were abundance of people, but she could not tell any particular body. So that of one hundred people, which, if she say true, were there, Mr. Braddon could not satisfy himself to enquire after some of them, but only he must pick up a child of 13 years of age to practise upon in this villainous manner. And it carries the greater venom, and malice, and virulency, and baseness, to endeavour to corrupt young people to that height, as to come and say, and swear those things in the face of a court, that are impossible to be true. It is impossible to be true, that she saw a coach in the yard; for you hear what account captain Hawley gives of his house. It is impossible to be true, that there should be a crowd of people, because that there was a sentinel at the door, who must see all that go out, and that come in; and there is no way to go into the yard, but through the back-door, and the pales are so high, that nothing can be flung over, that could be easily discerned. So that the very thoughts of such a thing as this are ridiculous in themselves, and not only the falsity of the story is apparent, but there is also apparent a great villany, in endeavouring to get witnesses to prove that falsity. For you see who Mr. Braddon employs; he gets a barber to go along with him on purpose to testify what idle reports he could pick up. But this barber, and the other witnesses, when they come here, cannot tell any thing. For the barber, he says, she said, There lay a razor; but the information says, (to which he is a witness) that the soldier cried, Take up the razor; and she now upon her oath denies any thing of that.

The next evidence is the aunt, and she tells you, she does not remember such and such particulars, but somewhat to that purpose she does; but whether she named my lord of Essex, or no, in particular, as to his lodgings, she cannot give an account.

Then you have Glasbrooke, that comes to give an account concerning this girl's story, and he plainly is quite different from what the others had testified before; for his evidence is, that the girl had said my lord of Essex cut his own throat, and afterwards flung the razor out of a window: after he had committed this horrid murder upon himself, he got to life again, and threw away the instrument he did it with; that is plainly his testimony, that this child should say so. So that, as in the case of Susanna, which I heard cited here upon another occasion, the wicked elders were discovered by the different circumstances of time and place; so here you have circumstances of time and place, and of all things in the world that can contribute to prove the falsity of this report, and to prove the malicious design of these people that were engaged in this business.

The next witness is one Smith, and he speaks much to the self-same purpose. He was the barber that went with Braddon to examine this girl.

Now gentlemen, you are to consider of these contrivances of Braddon, in busying himself to solicit these children to testify these stories, after a denial by the boy to sign the paper, to tell him there was no harm could come to him, to dictate what he should say, and put words into his mouth, about going to see my lord Gerard's lodgings, which he never spake of; for him to dictate to the other witness the pin-maker of Marlborough, what the right day should be, to set up such a senseless story, that he heard such a thing at the post-house, but he cannot tell from whom, or name any one that heard it or spake it besides himself: it is strange how he should meet with this man, for even the man himself tells you, he knows not who he had discoursed of it to; and never saw Braddon till that time he writ the letter. But you may observe, that to be sure the report might be spread, it was so contrived that the scene should be laid in the post-house, and then it was like to run abroad quickly; for alas it was not their business to make truth of it, but to make the discontented rabble believe it to be a truth. And so they began to consult with themselves where it was best to lodge it, and upon deliberation the place must humour the design as well as the time, and that must be at the post-master's house, in order to disperse the noise of it; and then Mr. Braddon takes his circuit to Salisbury, unto sir Robert Atkyns, at Stow in the Wold, and to other people, filling the country with his braded ware; and it is time to look after such pedlars, for they vent the worst of ware.

Then, gentlemen, you may observe this fellow is easily persuaded to swear any thing, for he gives no manner of account how he came to hear what he speaks of, or from whom, or how Mr. Braddon came to him: he had never seen him before that time, he says (though Mr. Braddon had such a value for this worshipful pin-maker, whom he never saw, that he came from London upon the least intimation of this man, so zealous he was for the carrying on this weighty affair, which I may call this impudent and intolerable lie).

Gentlemen, I must tell you, if any proof in the world be sufficient to prove malice, you have sufficient proof of it before you now. If it had been a thing of indiscretion only without malice, if there had been nothing of caution given to him about it as a thing that concerned not him, there might have been something said to alleviate it; but for him to come as if he had authority from the countess of Essex, and sir Henry Capell, who denies it, shews the malice of his design.

Gentlemen, 'Tis a concern of an high nature, and if you do believe these persons that are defendants, or either of them to be guilty; such as you believe to be guilty, you must find guilty, and of so much as you believe them guilty. And if in case they shall by you be found guilty, the court is to take care to inflict a punishment, if it be possible, suitable to their offence.

Then the court arose, and the jury afterwards gave in a private verdict, which the next morning was repeated in court and recorded. And by that verdict they found the defendant, Laurence Braddon, Guilty of the whole matter charged upon him in the information, and the defendant Hugh Speke Guilty of all but the conspiring to procure false witnesses, and of that they found him Not Guilty.

Lunæ, 21 Aprilis.

Att. Gen. My lord, here are two persons to receive your judgment.

L. C. J. Who are they?

Att. Gen. Braddon and Speke. But it being late, I know not whether you will give it now, or appoint some other time.

L. C. J. No, no, let them come in. They will say we are afraid of giving judgment else.

Then Mr. Braddon and Mr. Speke came into Court.

Att. Gen. My lord, we pray your judgment for the king, that you will set a good fine.

Mr. *Williams.* We are retained to move in arrest of judgment.

Att. Gen. Judgment is entered already, and there is nothing but a fine in the case.

Mr. *Williams.* My lord, if it be entered, it is entered but this term; and it is in the breast of the court, if they please, to admit us to speak in arrest of judgment.

L. C. J. When were the rules out?

Mr. *Williams.* My lord, it was put off by consent to this day.

L. C. J. But when were the rules out, I ask?

Cl. of Cr. The rules were out the last day of the last term, and then judgment was entered.

L. C. J. Well then, judgment is entered, what say you against a fine?

Mr. *Williams.* We were retained to move in arrest of judgment, I am sure I was, and instructed to that purpose.

L. C. J. I cannot tell what you were retained to do, but now judgment is entered, what say you as to the fine;

Mr. *Williams.* We cannot say any thing as to that, we are not instructed; I am sure I am not.

Mr. *Wallop.* My lord, we took it, and I was told so, That it was put off by consent to this day.

L. C. J. I know nothing of your consent, nor what you consented to. If you consent among yourselves at the bar, that is nothing to the court. Here we find judgment entered, and we must proceed upon what is before us.

Mr. *Wallop.* Your lordship will please to remember, what the evidence was.

L. C. J. I do remember it very particularly.

Counsel. My lord, Mr. Speke is found guilty of nothing but writing that letter.

Att. Gen. He is found guilty of all but the suborning.

L. C. J. We do very well know there is a difference between them.

Then the last Rule was read.

L. C. J. Well, judgment is regularly entered, What say you to it for the defendants?

Mr. *Wallop.* My lord, we conceive we have very good matter upon the verdict, to move in arrest of judgment.

L. C. J. Yes, no doubt, what you have to say is extraordinary material, but you come too late, we cannot hear you. Sir Samuel Astrey, is judgment entered according to the course of the court?—*Cl. of Cr.* Yes.

L. C. J. Then we must proceed to fine them.

Braddon. Pray, my lord, let Mr. Ward be asked, whether they did not agree we should move to day?

Mr. *Ward.* That was only an agreement on Saturday, that they might appear to day, and I would not take them in execution.

Braddon. This was the day I was to move in, my lord; Mr. Burton knows very well, he agreed to it.

Mr. *Burton.* I know nothing more of it, my lord, but that indeed I did consent on Saturday, that whatsoever they could move then, they should move on Monday.

Mr. *Ward.* That was only that they should appear to day, instead of Braddon's being taken up by a Capias pro fine.

L. C. J. Well, well, I know nothing of your agreements, here is judgment entered regularly, as we find it; you had best bring your action against Mr. Burton, if he have done you any wrong, but I did not know that Mr. Burton was the king's attorney. But I find here is judgment against you, and it is a very foul offence, as notorious an offence as any person, under that which is capital, could be guilty of; base aspersions of the government, in order to promote sedition and faction; and for that end, made use of all villainous means to corrupt infants, and then justify that villainy with a brazen face, to that degree of impudence, as I never before saw, That all the justice of the nation must be affronted by such audacious fellows, for it seems his confidence has not left him; but here he smiles, and seems as if he had done no harm.

Braddon. My lord, I know my own innocency, and therefore have no reason to be troubled.

L. C. J. Your innocence! Your impudence, you mean. I tell you, had you been in any other country but this, the innocence you brag of, would have sent you to the gallies.

Just. *Withins.* Then you think, Mr. Braddon, you have done very well in what you have done?

L. C. J. Ay, I assure you, does he. And the zeal of his party has gone so far, that at Winchester, when I was there in the circuit, I was told that his doctrine had obtained so much in that country, especially about that place, whence some of the witnesses came, I mean Andover, that there was a woman that was here the other day, Mrs. Drake, being at conventicle, held forth, That my lord of Essex was murdered while the king was in the Tower, and that God was the avenger of murder, and had found out a proper person for the prosecution of it, that was Mr. Braddon; and this snivelling cant prevailed at the conventicle. It is no such smirking matter as you make it, Mr. Braddon, I assure you.

Braddon. My lord, if I did know myself to be under any guilt, I would very readily and humbly acknowledge it.

L. C. J. Well, I see a great many of the party about you, I can spy them out, though they think they are not seen; but they shall know we will not suffer such monsters as these to go without due punishment.

Just. *Withins.* He stands upon it, he is innocent still, notwithstanding all that was proved, and the jury's verdict.

L. C. J. Yes, alack-a-day, he wipes his mouth, and has not so much as eaten, I'll warrant you.

Just. *Withins.* I expected you would have been sorry, Mr. Braddon, for what you had done, and expressed some penitence, but it seems you are very innocent.

Braddon. I did not directly, nor indirectly, offer any thing to induce the children to give their testimony, nor was any such thing proved: I know my own innocency.

Att. Gen. The jury have found it otherwise.

L. C. J. And that upon a fair, a full and a convincing evidence, and no man in the world can make any doubt of the truth of that verdict; but he that had a share in your guilt, or in that it had a tendency towards, I mean that horrid conspiracy. And I assure you, Mr. Braddon,

you tread upon the very heels of it; smirk at it, and be as merry about it as you will.

Braddon. If I did not know my own innocency, then I had reason to be troubled.

L. C. J. Your own innocency? If you did not know your own impudence you mean; it is that only that makes you smirk and smile at such things as these.

Just. *Withins.* Mr. Braddon, when you were advised by sir Henry Capell to take a prudent and a good course, to go and leave it with a secretary of state, you would not take that advice, but you would go your own way, and you would turn examiner, and prosecutor yourself; when he that was the earl's brother, and was sure more concerned than you, thought it fitter to go that way.

L. C. J. We remember what sir Samuel Barnardiston, in his letter, speaks of this matter, Mr. Braddon, he was got off;* why, they dare not meddle with Mr. Braddon, he is such a dreadful man, and his party are so considerable, that we dare not meddle with them; and the Tories are all cast down. Alack-a-day! because these fellows can't cast down the government, therefore all honest men must be cast down, and not dare to meddle with them. But they shall see we are not so much cast down, but we are able to reach the highest of them. What condition is this man in? I speak in point of estate, for his other conditions, we know what they are, his trial will satisfy any man of that.

Att. Gen. He is the eldest son of a father that has a good estate.

Mr. *Williams.* He is then but heir apparent.

Braddon. No, I am a younger brother.

Mr. *Williams.* It seems he is but the second son, and a young gentleman.

Braddon. My father has an elder so[illegible] alive.

L. C. J. I remember particularly it is said in one of the letters, that he was a man of 7 or 800*l.* a year.

Cl. of Cr. That was in Mr. Speke's letter. He says his father had so much

Braddon. That is in Mr. Speke's letter; but that is not true.

L. C. J. I don't know truly, that may be as false as any thing else you went about to have these children swear; but I'll undertake it, if thou hadst told the little girl that he had 800*l.* a year, she would have been as ready to have sworn it as the other.

Just. *Withins.* 'Tis a wonderful thing, Mr. Braddon, you could bring nobody to come and testify these things, but those two little children.

L. C. J. But oh! What a happiness it was for this sort of people, that they had got Mr. Braddon, an honest man, and a man of courage, says Mr. Speke, a man *à propos;* and pray, says he to his friend, give him the best advice you can, for he is a man very fit for the purpose, and pray secure him under a sham name, for I'll undertake there are such designs upon pious Mr. Braddon, such contrivances to do him a mischief, that if he had not had his Protestant flail about him, somebody or other would have knocked him on the head, and he is such a wonderful man, that all the king's courts of justice must needs conspire to do Mr Braddon a mischief; a pretty sort of a man, upon my word, and he must be used accordingly; men that arrogate and assume to themselves a liberty to do such kind of things, must expect to fare accordingly.

Just. *Withins.* Mr. Speke is not found guilty of the subornation.

Att. Gen. He is found guilty of all but the subornation; he is found guilty of conspiring to spread the report. The subornation will require another sort of punishment.

L. C. J. Ay, but there is a difference between them. The crime was very great in Mr. Speke, though not so great as in Mr. Braddon, and I am sorry that Mr. Speke should be concerned in it, and should take such care about such a business, with all that piety and zeal for religion he expresses in his letter to sir Robert Atkyns (Mr. Justice Atkyns that was,) that he should recommend him to have a wonderful care of him, and then thank him for his kindness shewed to our party: So he makes himself to be of the party, and makes this the business of the party, and so makes himself to be a sharer in the business; for it is 'We thank you for your kindness to us, and 'the tide is strong against us, and we hope we 'shall be able to bring the business of my lord 'of Essex upon the stage, before they do any 'of those in the Tower.' So Mr. Speke makes himself a party in the business. And I am mighty sorry that when he comes to be asked the question, How he came to write this letter? he should tell us, He had been at the tavern, and did not know what he writ, but does not say, he recollected afterwards. It seems he used to be often at the tavern, and had been there when he writ this pious letter, and so his saintship broke out in a fit of drunkenness, for most of our reformers of religion now-a-days want common morality. And yet they are wonderfully zealous for reformation and religion. All the villainy that has been thought of, nay more than ever could enter before into the imagination of mankind, has been wrought by these men, that pretend to be reformers of religion, and amongst the rest Mr. Braddon; and indeed I look upon Braddon to be the daringest fellow of the party, he and his brother Smith. If there were any reluctancy, or any sense of any guilt they had contracted, and would shew it by acknowledging their being surprized into it, and testified repentance by a submissive and dutiful behaviour, that were something to incline the court to commiseration; but when we see, instead of that, they are more obdurate and steeled in their opposition to the government, they must be reclaimed by correction, and kept within due bounds by

* See the first of sir Samuel Barnardiston's Letters, which were read on his Trial, Feb. 14, 1684, *infra.*

condign punishment, otherwise it will be thought by the ignorant sort of people, that all courts of justice are afraid of them.

Just *Withins.* Nay, Mr. Braddon's zeal was very extraordinary in the case, going on in this business, not only without, but contrary to the advice of sir Henry Capell, who surely was most concerned about the death of his brother.

Then the Judges between themselves consulted about the Sentence, which Mr. Justice Withins pronounced thus.

Just. *Withins.* Mr. Braddon, You see what it is you are convicted of. It was for as foul an offence, as any can be imagined, that is not capital, wherein the king is very much concerned, for the insinuations were such, as that the king was mightily concerned; for in as much as you say the earl of Essex should be murdered at that time the king was in the Tower, it was an implied accusation of the king, and an insinuation that the king should design to take away an innocent man's blood, and so downright be guilty of murdering an innocent person, which how great an offence that is, let any man that has any loyalty, or reverence for the king in him consider, and you cannot say you are innocent, Mr. Braddon. Your prosecution was most pertinacious, and you would proceed after the boy had denied it, and proceed in such a manner, when sir Henry Capell had told you what you should do: and what did you go upon? You had got a little girl, a child of 11 or 12 years old, to tell a story of I know not what, and nobody else knew any thing of it, and this must be a ground sufficient for you to go up and down, and spread such a report, when sir Henry Capell gave you advice to go to a secretary of state, and let him examine it; indeed you did go to him, but would not rest satisfied with what the king and council did; no, Mr. Braddon, you thought that would not gratify your own passion, and malice against the king and the government, but you must take ways of your own. This is to scandalize the whole justice of the nation, and not only make the king a murderer, but you would have all the plot hereby quite lose its credit; and you would make it, as sir Samuel Barnardiston would insinuate, a sham plot, to take away innocent Protestants lives. But as to the plot, there has been fresh proof of it beyond all contradiction this day; a man here in the face of the whole court has owned the whole thing; he would not take the liberty of defending himself, that was offered him, if he would try it, but confessed that conspiracy, which you had a great mind to be an instrument of making the world to believe, was nothing but a Sham.* I shall not make any long speech to you.

'The Court, for this offence, sets upon you, 'Mr. Braddon, the fine of 2,000*l.* and order 'that you find sureties for your good behaviour 'during your life, and that you be committed 'till this be performed. And for you Mr. 'Speke (we have considered that you are not 'so highly guilty as Mr. Braddon, you are 'guilty of a great offence, but not so guilty 'as he, and therefore) we think fit to set 'upon you the fine of 1,000*l.* and that you 'find sureties for your good behaviour during 'your life, and be committed till you per'form it.'

L. C. J. Marshal, take them in custody, and use them as they ought to be used.

Counsel. My lord, Mr. Speke's bail is discharged, I suppose?

L. C. J. Ay, they must be, as to this matter, but nothing else but this.

Then they were carried away to the King's-bench prison.

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* Of this word Sham, which was very much in use, during the latter part of king Charles the Second's reign, Roger North gives the following curious account, at the opening of the second part of his 'Examen.'

"It may be expected, that, before we enter upon the subject matter, this term of art, Sham-Plot, should be decyphered. The word, Sham, is true cant of the Newmarket breed. It is contracted of ashamed. The native signification is a town lady of diversion, in country maid's cloaths, who, to make good her disguise, pretends to be so 'ashamed!' Thence it became proverbial, when a maimed lover was laid up, or looked meager, to say he had met with a Sham. But what is this to plots? The noble captain Dangerfield, being an artist in all sorts of land piracy, translated this word, out of the language of his society, to a new employment he had taken up of false plotting. And as, with them, it ordinarily signifies any false or counterfeit thing, so, annexed to a plot, it means one that is fictitious and untrue; and, being so applied in his various writings, and sworn depositions, of which we shall have much to observe, it is adopted into the English language. But, that we may not fall short in our criticism, I must note that the meaning is not simply a false plot; but the word implies somewhat of Trapan, joined with it."

Here in the former edition of the State Trials was inserted a Tract, entitled, "The Earl of Essex's Innocency and Honour vindicated, in a Letter to a Friend, by Laurence Braddon." The full title of which Tract, as I find it in a copy now before me, which appears to have been printed in 1690, is "Essex's Innocency and Honour vindicated, or Murther, Subornation, Perjury, and Oppression, justly charged on the Murtherers of that Noble Lord and true Patriot Arthur late Earl of Essex, as proved before the Right Honourable (late) Committee of Lords, or ready to be de-

In a Letter to a Friend. 'Blood "'crieth unto me from the ground,' Gen. "iv. 10. 'A fugitive and vagabond shalt "'thou be in the earth,' Gen. iv. 11: 'How "'long, O Lord, holy and true, dost thou "'not avenge our blood on them that dwell "'on the earth,' Rev. vi. 10. Written by "Lawrence Braddon, of the Middle Temple, "gent. who was upwards of five years imprisoned for endeavouring to discover this "Murther the third day after the same was "committed."

To this pamphlet is an engraved Frontispiece, representing the murder of the earl, the apartment where it was committed, and the closet where the body lay, agreeably to Braddon's account. The pamphlet has also the following

"APOLOGY

"For the Letter to a Friend" [which was not in the former Edition.] To the Right Hon. WILLIAM Earl of DEVONSHIRE, Lord Steward of their Majesties Household, &c. WILLIAM Earl of BEDFORD, &c. CHARLES Earl of MONMOUTH, &c. HENRY Earl of WARRINGTON, &c. the Lords of the (late) close Committee appointed to examine into the Death of the Right Hon. ARTHUR (late) Earl of ESSEX.

"My lords;

"When immediately after the death of the right honourable Arthur (late) earl of Essex, I did first make enquiry with relation thereunto, upon such information as I have already given your lordships, there was nothing that might be expected from a powerful and revengeful party, against which I then moved, but what I did believe they would endeavour to inflict upon me; for this I had the greater reason, having then been often credibly told, that some (whose interest was most concerned to prevent this discovery) had several times declared, I should be both pilloried and whipt. But this, or whatsoever else was within their power to impose, I was resolved should not deter me from searching after such circumstances as might rationally convince persons, unprejudiced, that his lordship fell (not through self violence, but) by the transcendant authority and interest of some, and the treachery and bloody cruelty of others; because that great patriot (with your lordship and such others) stood as bulwarks against those popish and arbitrary designs, which were then (judicially seen through a glass, but since, to our great cost, and greater danger, face to face, and) carried on for the total subversion of our church and state.—Wherefore I had great reason to believe (admitting his lordship was murdered) that such who were therein concerned, if they found there was no inquisition made after this blood, but that all did seem to believe (only by the evidence of those in whose custody his lordship was) that this noble lord indeed cut his own throat, to avoid what his great misfortunes seemed to threaten; that then the natural consequence thereof would be this; (viz) whomsoever those powerful and bloody men found to stand in their way, whom they then had, or should take into custody, they would place over them such as they had prepared to commit or permit what was treacherously designed to be acted; and then by strangling, stabbing, pistolling, or cutting of throats (either of which is a common way of self-destruction) they would take such off, pretending (as in this case they did) it was done by the persons themselves, to prevent an infamous execution, and avoid those forfeitures of honour and estates, which the law would otherwise have made by their conviction and punishment.

"My lords, the prevention (as much as in me lay) of such vile practices, was not the least inducement that first moved me to this inquiry; and whatever opposition I then met with, either under colour of justice, or malicious detractions, I was not at all surprized with, and therefore the better prepared to suffer it; and seeing I could then expect no relief, or just satisfaction, from those, who were chief in imposing the injuries I suffered, I thought that a time for me (in this respect) to keep silence. But since God (by our present sovereign) hath mercifully removed such oppressions; I think now is the time to speak, and not suffer to go unanswered such malicious and infamous calumnies, representing me the very worst of suborners, and deserving far worse usage than ever Dr. Oates underwent, and this said, not by a few, but many. Wherefore out of a just self-regard (which every man owes to himself) I thought I was in duty bound to endeavour some way or other, to clear myself to the world from being that profligate villain, I have been as industriously as maliciously misrepresented. And because I would that the plaister should be as large as the wound, I have in this following epistle, attempted to undeceive the unprejudiced part of mankind; but as for some, miracles will not convince them; and others there are, who (knowing much more than I can inform them) will never confess themselves converts to truth.

"My lords, Would such men as maliciously misrepresent me, proceed against me by way of judicial information, I should take it very kindly, for then I should have an opportunity (now justice is duly administered, and favour in this I desire none) to clear my innocence. And there having been about seventy persons in all sworn, or examined before your lordships, and some justices of the peace (and some hundreds discoursed to find these witnesses out) if I had been such an infamous suborner as represented: in this cloud of witnesses, they have a fair opportunity to find some, for suborning of whom, they may proceed against me. But being well satisfied in my abhorrence of, and

innocence in all such detestable practices, and that I have ever been so far from desiring people to say more than they could safely depose, that I did always beseech and enjoin them much rather not to swear any thing, than the least tittle more than was true; assuring them, that whosoever in this case testify more than is truth, and thereupon any should suffer by such perjury, they would commit the worst of murders, for which one day, (though here not detected) they must give a severe account.

"My lords, In all I did heretofore suffer from my adversaries, whether during my being prosecuted, or five years imprisonment, I had not one uneasy thought, that moved me in the least to repent my having engaged in so just a cause; and I was firmly possessed with a strong belief, that I should live to see the day wherein my lord's death might receive its proper name, and myself vindicated from that, for which I had been so powerfully and maliciously accused, and unjustly convicted, and I hope, that day will then come, when your lordships shall think fit to move to revive this committee, in order to the bringing in your lordships' report. But what I have, or do suffer in the mean while, though it is more than can be imagined, yet I must and shall submit to your lordships great judgment herein.

"My lords, I am very sensible of the great charge the right honourable the earl of Essex hath been at in this prosecution before your lordships, though not greater than therein hath been expended: but I cannot apply myself to his lordship, either for what remains, or to his lordship or his honourable family or elsewhere for any satisfaction for what I have done and (through oppression as severely as unjustly) suffered under the male administration of the late times, till the honour of the truly right honourable but unfortunate earl of Essex is rescued from that unjust, false and infamous imputation, under which, (in many men's opinions) it hath so many years been buried; and without some assistance, I must reasonably expect to be cast into gaol for some of those very debts which my long misfortunes have contracted; in which miserable place I may possibly perish for want of bread. But which is much worse than death, thus I was like to suffer under the most odious character (from too many) of an infamous imposture and common suborner. For the avoiding therefore the worst of these two evils, I have published to the world my own just Vindication; and I am sure your lordships can never blame me for endeavouring to avoid so hard and undeserved a fate. And should all this prove my misfortune, (I am well satisfied) it is without in this respect my fault; and therefore having done nothing herein, but what I can answer to God, and a good conscience (and I challenge all, even the greatest of my adversaries to prove the contrary) I shall (I hope) never repent of having done my duty, but shall patiently wait for a deliverance from that which will put a period to all the tyrannous oppressions of such as groan under the weight thereof; but (without true repentance, which God in mercy grant to all, even the greatest of my enemies) will prove but the beginning of a more lasting sorrow to the chief author hereof; from whom, as God in mercy, by our present sovereign hath once delivered us, so I hope he will (even against the wills of too many amongst us, and contrary to the deserts of all) continue that blessing: towards the first procuring whereof, as your lordships were some of our chiefest patriots, so (I am sure) you will in that evil day which threatens, exert your utmost for the prevention of that worse than Egyptian bondage, in which the more than Israelitish madness of not a few, strenuously endeavour to reinstate us.

"And that God may continue your lordships' health to see this black cloud all blown over, and a prosperous and a well grounded peace firmly settled amongst us, and a long continuance of your lordships in the enjoyment thereof, is the humble prayer of him who doth earnestly beseech your lordships' pardon, if in this publication, or present address, I have in the least offended your lordships whose I am in the most humble services; and whilst I live shall be ambitious of being thought, my lords, your lordships' most obedient and devoted servant, LAWRENCE BRADDON."

I have also before me an anonymous pamphlet on this same subject, which appears to have been printed in the year 1689. It is rather longer than Braddon's "Letter to a Friend," printed in the text of the former edition, and bears this title, "An Enquiry into and Detection of the barbarous Murther of the late Earl of Essex, or a Vindication of that Noble Person from the Guilt and Infamy of having destroyed himself."

Ralph, relating the parliamentary proceedings of the year 1689, says, "The Lords, in the beginning of the session, appointed a special Committee to make an Inquiry into the death of the earl of Essex; but though many persons were examined, and one (captain Holland) was committed to Newgate, under a suspicion of being concerned in his murder, only some small circumstances, says sir John Reresby, appeared, which, it seems, were not sufficiently material and certain, either to ground a prosecution upon, or even to authorise such a report, as might serve to justify Braddon's books or the use which had been made of them. [Sir John Reresby's words are 'Public declaration had been made that 'the birth of the prince of Wales was false or 'supposititious; that there was a private treaty 'made with France to inslave England; that 'the murder of the late king and of the earl of 'Essex, would be amply made out; and yet 'nothing of all this appeared, excepting some 'small circumstances relating to the earl of 'Essex.' Memoirs, p. 318, Feb. 9, 1688-9.]

The said Braddon, nevertheless, not only persisted in his former charge, but long after, in a printed Apology* for his own conduct in that affair, against the censures passed on him by Dr. Burnet, more than insinuated, that the enquiry was stifled by such a confederacy of interests, as would have been too mighty for any proofs or evidences, how irrefragable or notorious soever."

* This printed Apology seems to be the Tract here printed.

But as Braddon, many years afterwards, published a fuller discourse, into which he incorporated the contents of his "Letter to a "Friend," and in which he also notices objections which had been made to the matter of that Letter, I have thought it better to substitute the larger discourse, with its Title, Dedication, and Preface.

Bishop BURNET's late HISTORY charged with great Partiality and Misrepresentations, to make the present and future Ages believe, that ARTHUR Earl of ESSEX, in 1683, murdered himself.*

But the Memory of that great Patriot is here vindicated from that false Charge, and it is here proved, that his Lordship was barbarously murdered, in the Tower, the third Morning after his Commitment. And Mr. Braddon, in 1683, was prosecuted and fined 2,000*l.* and ordered to give Security for his good Behaviour during Life, for endeavouring, by lawful Means, to discover this Murder; and he was imprisoned near five Years, before the Revolution discharged him.—And, in 1688, and 89, Mr. Braddon prosecuted that Inquiry before a Secret Committee of Lords; and near Sixty Witnesses were examined in relation to that Murder; and an Abstract of their Examinations is here reprinted, with Remarks thereupon. And the Reason given why the Lords, upon those Examinations, came to no Resolution, in relation to the manner of his Lordship's Death. With Observations upon the supposed poisoning of King Charles the Second; and one of the most probable Causes thereof, is here mentioned. Written by Mr. BRADDON. London: Printed for Joseph Pickles, in New Palace-Yard, Westminster, 1725.

TO THE

Right Hon. WILLIAM Earl of ESSEX, and to all the Right Hon. Descendants from, and Relations to that Noble Family, this VINDICATION of that great Patriot, ARTHUR Earl of ESSEX, who, in 1683, was treacherously and barbarously murdered in the Tower, from Bishop Burnet's false Charge of Self-Murder, is humbly dedicated, by his Lordship's, and their Honour's most humble, and most obedient Servant,

LAURENCE BRADDON.

THE PREFACE.

HAD I not been afflicted with sickness for many months past, and otherwise hindered from writing what I have now published relating to my lord Essex's death, I should long since have endeavoured to vindicate the memory of that great Patriot, and noble lord, Arthur earl of Essex, from the false charge of self-murder, in bishop Burnet's late History contained. And I would have also endeavoured to have cleared myself from that unjust reflection, of being an Enthusiast, as that prelate hath therein represented me to be.

When in 1683, I was engaged in the inquiry into the death of the earl of Essex; the Papists then represented me to be a mad-man; and therefore those slanderers then said that no regard was to be had, to what I did, in relation to my inquiry into the death of the earl of Essex. But these my Popish false accusers did not then consider, that by that report, they cast a much greater reflection, upon their then favorite ministry, who at the council board then demanded of me bonds (with good sureties) in 12,000*l.* for my appearance, and as much more, with good sureties, for my good behaviour. Certainly all those privy counsellors then at that council-board, had then justly deserved to be termed mad, for requir-

* The question concerning the manner of Essex's death, is considered at some length by Rapin, Ralph, and other historians. Mr. Hume is very decided that Essex killed himself. Roger Coke writes thus:

"The great design was upon my lord of Essex and my lord Russell; one the most eminent of the nobility, for his great honour and all eminent virtues; the other of the Commons; and both zealous Protestants, and opponents to the design of introducing popery and arbitrary power.

"I must observe, whether my lord of Essex killed himself, or was to be killed; the king and his brother were both in the Tower when the act was done, and immediately notice

ing 12,000*l.* bonds, with good sureties for the good behaviour of a madman, had I then been really such.

But this reverend prelate in his late History hath (in effect) revived that charge against me, by representing me an enthusiastical man, that is, one madly possest with false notions in religious matters.

Now, this bishop being resolved to represent Arthur, earl of Essex, as *felo de se*, and well knowing, that I had, by a very long and expensive inquiry, endeavoured to prove that his

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was sent to the Old Bailey, that in the worst sense, use might be made of it by the king's counsel against my lord Russell.

"The blaze of the earl's having murdered himself, having had its designed effect upon my lord Russell's trial, July 13, 1683, the next step was to satisfy the nation the earl murdered himself; and to this purpose the coroner's inquest must necessarily sit, and give their verdict; but so the business was ordered, that before the jury was impannelled, the earl's body was taken out of the closet, (where it was pretended he murdered himself) and stript of his clothes, which were carried away, and the closet washt; and when one of the jury insisted upon seeing my lord's clothes in which he died, the coroner was sent for into another room; and upon his return, told the jury it was my lord's body, not his clothes, they were to sit upon. And when it was moved, that the jury should adjourn, and give my lord's relations notice, that if they had any thing to say on my lord's behalf; it was answered, the king had sent for the inquisition, and would not rise from the council board till it was brought.

"I do not find, that when the like practices were used, and when the coroner's inquest found sir Thomas Overbury died a natural death in the Tower, that two years after, when Reeves, the apothecary's servant, made the first discovery of sir Thomas his being poisoned, that Reeves was prosecuted for flying in the face of the government, and questioning the justice of the nation, as Mr. Speke and Mr. Braddon were for endeavouring to discover the murder of my lord of Essex. I am sure their inducement for the proofs of it was manifoldly more than Reeves's were of sir Thomas Overbury's; and I wish I understood what their crimes were more than Reeves's: but that being for the king and justice of the nation, they ought to have been encouraged, if there had been no foul dealing in the earl's death." Coke's Detection, vol. 2, p. 315.

Sir Richard Bulstrode, who was king's resident at Brussels, in his Memoirs, after having related in its proper place, "This morning being the 13th of July [1683] the lord Russell and Hone, the joiner, were brought to their trial and found guilty of high treason. At the same time the king being visiting a fortification that was making in the Tower, the earl of Essex, withdrawing into his closet, cut his own throat with his razor, of which he died immediately:" in the next year [May or June] says, "I am told from a good hand that Danvers, who is now in the Gazette was the author of that damnable libel about the earl of Essex, being a parcel of lies and forgeries maliciously put together to persuade the Whigs and ignorant that the then earl of Essex was murdered by order of the government, when it was apparent that he cut his own throat."

In a Note to 3 Kennett Comp. Hist. p. 400, 2d edition, it is said, "The Rev. Dr. Goodman had been chaplain and confident of the earl of Essex; and when seriously asked, his opinion of the death of his lordship in the Tower, he answered, He would give all he had in this world to believe that the earl had not killed himself."

The present earl of Essex (1810) has informed me, that he saw in the books of the Treasury an account of payment, after lord Essex's death, of a pension to Bommeney, by order of Charles the Second. I have looked through the indexes (which however are faulty) of the Warrant Books in the Treasury, from before the time of lord Essex's death to November 1688, and do not find in them the name of Bommeney.

The following extracts from a work to which I have often referred, have relation to the opinions entertained and propagated respecting Essex's death:

"One Boileau, a French Protestant, pleaded guilty to an indictment for selling a scandalous book, called "L'Esprit de Monsieur Arnaud." (which vindicates the late lord of Essex from murdering himself). But the king was pleased to shew him mercy, so he was fined but 6*s.* 8*d.* and discharged without paying his fees.

"Dec. 19th, 1684. There has been for some days past a scandalous libellous book, entitled, "An Enquiry about the barbarous Murder of the Earl of Essex," and a single sheet, writ by colonel Danvers, being an abstract of the former, thrown about the street, and in at several persons' doors; and there is a reward of 1,000*l.* published in the Gazette, for any one that shall apprehend the said col. Danvers.

"Feb. 3, 1685. Lancelot Colston, one of the coroner's inquest that sat on the late earl of Essex, pleaded at the Court of King's-bench, Not Guilty, to an information for words he had said touching the same, 'That it was 'impossible any one should cut his throat in 'that manner,' &c.

"July 8th, 1685. One Norden, convicted for bringing in several of the libels about the late earl of Essex, was sentenced to pay 200 marks, to stand in the pillory at Ratcliffe, be bound to his good behaviour for seven years, and to be committed till done.

lordship was treacherously murdered, that great prelate was therefore also resolved to give me such a contemptible character, that all men, who should believe me to be such, would immediately reject, and despise all the proofs, by me brought in contradiction to the bishop's suggestions. For all men of observation find this to be true, viz. that the generality of mankind believe things to be true more, from the character of the relator, than from the arguments which he brings to prove his assertions to be true, and therefore if a man be, though unjustly, thought a contemptible fellow,

All his arguments which he brings, for his opinion, though never so conclusive, shall not, by those who despise his person, be at all considered, but immediately rejected, with contempt.

And this I do solemnly say, that I do believe, the memory of that great, but unfortunate peer, hath suffered more injustice from what that learned dignitary hath said, writ and done, to prove my lord a self murderer, than by all that was sworn before the coroner in proof thereof.

For my lady's belief of the self murder, hath, in common conversation, been always urged as the principal argument to make others believe that his lordship cut his own throat. And, by the bishop's late History, it appears, that such her opinion, was principally grounded upon that bishop's judgment, or upon what he declared in relation thereunto.

And, it appears by what follows, that I have suffered more misfortunes, from that bishop's unjust character given me, than by the arbitrary prosecution of a corrupt administration, in the reign of king Charles the Second. For that last misfortune, continued about five years, and all that time I was pitied by those, who knew my sufferings, and wished well to their native country. But the bishop, in common conversation, representing me an enthusiast and a mad man, hath, by those who believed me deserving those characters, made me to be despised and treated with contempt, for 35 years past. And therefore I can truly say that I have suffered more injustice occasioned by that bishop's ill treatment, than from the tyrannical oppression, of a prevalent Popish faction, by five years unjust imprisonment.

Soon after doctor Burnet, in 1688, came with the then Prince of Orange, to London, I met him at St. James's Palace, where he treated me with a seeming great affection, then assuring me, that he would do me all the service within his power. But as soon as I renewed, before the House of Lords, the inquiry into my lord's Murder, that reverend doctor's carriage towards me was mightily changed, and, instead of speaking kindly to me, he would not after that so much as afford me a

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" Nov. 27th, 1685. One Launcelot Colston being convicted of speaking words against the inquisition that found the late earl of Essex *felo de se*, he being one of the jury, was sentenced to pay 200 marks, and be committed till paid.

" June 17th, 1686. One Thimbleton, an Anabaptist preacher, convicted of publishing several libels as to the murder of the earl of Essex, was sentenced to pay 100*l*. fine, to stand in the pillory thrice, at Westminster-hall gate, at the Exchange, and at Wapping." Narcissus Luttrell's " Brief Historical Relation," MS. in the Library of All Souls' College.

The following passage is extracted from the " Diary of Henry, Earl of Clarendon, subjoined to his State Letters," (4to Oxford, 1763) " 1689, May 27, Monday. In the afternoon, my wife and I went to Chelsea to the dutchess of Beaufort, whom we found alone. She told me the whole story, how lady Essex had sent for her and her lord, and all the relations, lord Bedford, Devonshire, bishop Burnett, and young Mr. Hampden, about the matter relating to lord Essex's death, now depending before the Committee of Lords; that she had declared, that she believed, he killed himself; and, therefore, desired the business might fall. She told me, Burnett and Hampden both owned the conspiracy against king Charles 2. I should have been there, if I had been in town. Brother Capell excused himself, pretending to be indisposed, which looked very odd." Note, Lord Clarendon was married to a sister of lord Essex's. By " brother Capel," I suppose he means Henry Capel, next brother to the earl of Essex, who, in 1692, was created lord Capel.

Sir John Dalrymple (Memoirs of Great Britain and Ireland, part 1, book 1, p. 21, 4to ed. of 1771), after mentioning that Essex, Sidney and Hampden were formidable " partly because they were determined Deists, and partly because they who believe they have a right over their own lives are always masters of those of other men," subjoins in a note, " Hampden killed himself after the Revolution. Essex's death, together with a letter from lord Arran, the duke of Ormond's son, to sir Leoline Jenkins, 24th July, 1683, in the Paper Office, shews that Essex had the same principles." It may be doubted whether Hampden's flying to suicide, as a relief from the feelings of uneasiness, remorse, and shame with which he was afflicted, is any proof that he was a determined Deist, or that he believed upon principle that he had a right over his life. I have (November 1810) examined the Letter in the Paper Office, from lord Arran to sir Leoline Jenkins: it says nothing of Essex's principles, and the part which relates to Essex merely mentions that the writer at first felt much surprize at the information that Essex had destroyed himself, but that his surprize was diminished by the recollection, that when alderman Quin cut his throat, Essex said he thought that was an easy death.

favourable countenance; but whenever he saw me, he would turn away his face, with such an air of contempt, as proved, that he thought me not deserving that common respect, which is generally due to all mankind. For that learned doctor, in 1683, having hindered my lady from then prosecuting my lord's murderers; and having then endeavoured to persuade her ladyship, and all others with whom he then conversed relating to my lord's death, that my lord himself cut his own throat. That great judge of men and things would much rather, that the memory of my lord of Essex, his noble friend, should continue to rot, under an infamous, though false, charge of self-murder, than that his own great judgment should appear to have been imposed upon, in relation thereunto.

In the title of this discourse, I have charged bishop Burnet's late History with great partiality and misrepresentations, to make the present and future ages believe, that Arthur, earl of Essex, in 1683, murdered himself in the Tower. Now,

If in the following Discourse, it shall plainly appear, to every unprejudiced and judicious reader, that the bishop, in that History, hath omitted all the material proofs, which, that prelate was credibly informed, were sworn by many credible persons before the Secret Committee of Lords, to prove that my lord was treacherously and barbarously murdered. And,

If on the contrary, that prelate hath asserted, in proof of the pretended self-murder, several things as credible, from the authority of that very perverted Papist, Bomeny, whose Information before my lord's coroner, and his near station to my lord of Essex, at the time of his death, must prove him privy to, if not acting in my lord's murder, in case his lordship was barbarously murdered by others. I say, intirely to omit all the material and credible proofs, in favour of my lord, whom that prelate declares to have been one of the two best friends, he had in the world. And, *è contra*, for proving this pretended self-murder, for this bishop to assert, as credible the relation of a Papist, who was justly suspected to have been in this murder, must prove this prelate to have been very partial, in such his representation of things, relating to my lord's death; and also very unjust and ungrateful, to the memory of his noble friends, and great benefactor. And,

If it shall farther appear, that this learned prelate, hath, imperfectly and unintelligibly, represented some things, sworn at my Trial, in proof of my lord's being treacherously murdered. And, at the same time, in favour of the pretended self-murder, hath asserted some things as credible, which his lordship had cause to believe to be false. Then may that bishop be truly charged with unjust misrepresentations.

And the bishop hath not only endeavoured, by what his lordship thought proper arguments, to prove the earl *felo de se*; but that prelate would persuade the world, that it was impossible it should be otherwise. For the bishop saith, 'That when my lord's body 'was brought home to his own house, and the 'wound was examined by his own surgeon, 'he told me, it was impossible the wound 'could be as it was, if given by any other 'hand but his own.' What this surgeon thus told the bishop, that prelate believed to be true, or he would not here have mentioned it; though the reason that surgeon then gave the doctor, for such his opinion, was both false and ridiculous, viz. 'For, saith that surgeon, except he had cast his head back, and stretched 'up his neck, all he could, the *aspera arteria* 'must have been cut.'

Here my lord's surgeon denies, that the *aspera arteria* were cut, which there is reason to believe to be false, because the two surgeons, who viewed my lord's body in the Tower, have sworn, that the *aspera arteria* were cut. But, admitting they were not cut, the ridiculous part of that surgeon's reasons, [wherefore none but my lord could do it, in the manner it was done,] consists in saying to this effect, viz. 'That no person or persons whatsoever, could 'hold my lord's head so far back, and stretch 'out his neck so much, whilst his throat was 'cutting, as my lord himself could do it.'

Now, this is contrary to what was declared before the Lords' Committees, by several judicious physicians and surgeons, who were great anatomists. For all those anatomists told their lordships that they would not positively say that it was impossible for my lord to cut his throat through each jugular vein, the *aspera arteria* and gullet, to the very neck-bone, and even behind each jugular vein, on each side of the neck, as some judicious surgeons, who had viewed the throat, had reported it to be cut. But this they would be very positive in, viz. That they never saw any man's throat so cut, which was cut by himself. And they did then farther declare to their lordships, that they did believe, 'That when any man had cut through one of his jugular veins, and the gullet and wind-pipe, and to the very neck-bone, nature would thereby be so much weakened, by the great effusion of blood and animal spirits, that the *felo de se* would not have strength sufficient to cut through, and behind the other jugular, as my lord's throat, by surgeons which saw it, was said to be cut.'

Besides, my lord bishop was credibly informed, that my lord's centinel had confest the letting in three men to my lord, a little before his death. And that thereupon he heard a great trampling in my lord's chamber, and he heard something there fall, or thrown down, like the fall of a man. And the bishop was farther credibly informed, that it was sworn that four men were seen bustling in my lord's chamber, a little before his death was known, and that one of those four, this informant heard cry out murder several times.

Now, I desire to know, whether two of those three assassinates, kneeling on my lord's back, and with the additional weight of the third

ruffian's body. I say, whether two of those ruffians, thus assisted with the third bravo's weight, could not keep my lord down upon his belly, and hold his hands behind his back, whilst the third bloody villain, with one hand pulled up, and back my lord's head, and so stretch out his neck as far, and as long as it was necessary to be stretched out, whilst, with the other hand, he cut his throat, either above or through the *aspera arteria*, and through and behind both the jugular veins, and through the gullet, even to the neck-bone. That surgeon who shall say, that three bloody ruffians, cannot give such a cut, as well as the *felo de se* himself can perform such an operation, deserves more to be laughed at, than confuted by serious arguments.

Objection. If any shall object against me, on behalf of the bishop's late History, and say, that the bishop writ by the way of annals. And what, in that History was writ, in relation to the imprisonment, and death of that noble, but unfortunate lord, was writ in the year, 1683-84, and consequently it was not possible, for my lord bishop, in those years, to write what was six years after that sworn in proof of my lord's being murdered by others. And therefore that part of my lord bishop's History ought not to be charged, either with partiality or misrepresentations, for omitting in 1683-84, what could not possibly be then mentioned.

Answer. If an historian will in every year write annals, relating to the public, wherein he intends to mention all material public transactions, which he knows, or, hath been credibly informed, have been done. And this historian resolves, whilst he lives, to keep by him all those annals in manuscript, and by his will, or otherwise orders those memorials not to be printed until six years after his death. If that historian shall, six years after some things by him writ, receive much better and more particular information, in relation to some entries by him before made, through an imperfect information of things, relating thereunto. Then such an historian ought to review and compare his after information of facts, with those accounts he had before received, and writ down. And to consider and compare the credibility of those after informations, with the credit of those he had before believed, and entered. And if he finds, those latter accounts, are grounded upon much better authorities, than those which he had formerly believed and writ down. Then that historian, upon such a review and conviction, of the falsehoods or defects of his first memorials, ought, in justice to the characters of men, and truth of things, to correct his old mis-entries, and to leave things, to be published to the world in that light, which he believes to be the truest light, for the right information of mankind. And the bishop lived 30 years after his mis-entries of 1683-4, relating to my lord's death; which gave his lordship time sufficient to correct his former mis-entries relating to my lord of Essex. And this after review and correction that historian was the more obliged to make, when he resolved, in his Preface to his then intended History, to make this solemn Declaration. 'I do solemnly say this to the 'world, and make my humble appeal upon it 'to the great God of truth. That I tell the 'truth on all occasions as fully and freely, as 'upon my best enquiry, I have been able to 'find it out. Where things appear doubtful, I 'deliver them with the same uncertainty to the 'world.'

By this humble appeal to the great God of truth, the bishop did believe he should give the greater credit to his History. For this prelate doth thereby, not only (in *foro conscientiæ*) swear, that all things which in his late History he asserts, within his own knowledge is true. And that all things (by him related from information) he believes to be true. But this bishop, doth, in this humble Appeal, farther (in effect) swear, that he tells the truth as fully and freely, that is to say, the substance of the whole truth, without any favour or affection, to any person or party, as far as it fell within his own knowledge, or which, upon his best inquiry, he hath been able to find it out. Now,

For as much as this humble appeal is justly applicable to every particular passage in his History contained. If therefore this learned dignitary shall be detected, in one or more instances of his said History of great partiality, or which is worse, of asserting for truths what the bishop had good cause to believe to be great falsehoods Then this humble appeal to the great God of truth, will be so far from giving credit to his lordship's late History, That, on the contrary, it will make the credit of every part thereof, which shall appear to be only supported by the credit of this learned historian) to be justly suspected. For

If a deponent shall, upon interrogatories, positively affirm fifty particulars to be true, and forty-nine of these are really true. Yet if this deponent, shall be convicted, of having sworn falsely, only as to the fiftieth fact, by him positively asserted. His credibility, by that one conviction is intirely destroyed, as to all the rest of his depositions, so that (after such conviction) no part of his depositions shall be read or regarded.

I think it proper here to inform the reader, that in the following discourse I have not mentioned those paragraphs in the bishop's late History, which relate to the imprisonment, and death of Arthur earl of Essex in 1683, until I had given a very particular account of that lord's imprisonment and death, and what illegal measures were taken, to prevent the coroner's jury from being rightly informed of what was necessary by them to have been known, in order to their discovering the true manner of my lord's death. I have also therein informed the reader upon what occasion it was, that I, who was altogether a stranger to that noble family, did concern myself to detect the falsity of what was sworn before the coroner, to prove the (pretended) self-murder. And for what en[illegible]

gerous enterprise. What great discouragements and oppressions, I therein met with. I have therein also given an historical account of what measures I took, in the reign of king Charles the second, to detect that barbarous murder, and what powerful interest the then duke of York had to prevent that discovery, by causing me to be prosecuted, convicted and punished as a criminal, when nothing criminal was proved against me. And by that information, upon which I was tried, I was charged with endeavouring to prove that my lord of Essex was murdered by the persons in whose custody he was, and contrary to what was found by the coroner's inquest. I have, in the following discourse, shewn how the witnesses by me produced to prove this murder, were discouraged and brow-beaten by the then court of King's-bench. And how the very men in whose custody my lord was at the time of his death, were called a cloud of witnesses, not only to prove me a criminal, for endeavouring (by lawful means) to prove the most material of those witnesses guilty of my lord's blood. But those very men were also admitted as good witnesses to prove that they themselves did not murder his lordship, but that the earl himself became *felo-de-se*.

No justly suspected British murderers did ever meet with such a powerful protection from such a supreme court of justice. Nor did any lawful endeavours to detect a murder, ever in this nation receive such an ill treatment, as I have herein met with from a court of justice. In the following discourse I have given a particular account how the inquiry, into my lord's death, came before the Convention Parliament in 1688. And what witnesses were examined before the Lords' Committees then appointed to enquire into that matter. Why those Lords' Committees made no regular report, upon those informations and examinations, by them taken. And how it came to pass, when many informations and examinations were read in the House of Lords, relating to my lord's death, that their lordships did not then declare their opinion, as to the manner of that unfortunate lord's death. And therein is farther declared, How the secret committee was revived in the second session of the Convention Parliament. And what proceedings were thereupon. And how the prorogation and dissolution of that parliament did stop any farther proceedings in that inquiry.

I have in the following discourse declared, that the substance of all the material proofs therein mentioned, and, said to have been taken before the Lords' Committees, and some justices of the peace, in the year 1688-9, were by me printed and published in the year 1690, in a Letter to a Friend, touching the murder of that great but unfortunate lord. Which letter bishop Burnet read, soon after it's publication. This plainly appears by the bishop's repeating, in three several gazettes, a Declaration, wherein he doth deny the truth, of one argument, which (as I had been informed) that prelate used, to make several lords believe, that the earl of Essex murdered himself. Now to prove that the bishop was guilty of great partiality and mis-representations in what in his late History he hath writ relating to my lord's imprisonment, and death. I thought it proper that all those informations, taken to prove my lord's murder, I should at large mention, before I gave an account of those two particular paragraphs, in the bishop's late History, wherein that prelate gives a very partial, imperfect, and indeed, unintelligible account of things, relating to my lord's death. And for as much as the bishop had about 24 years time to correct his mis-entries, in 1683-4 relating to my lord's death. Within those many years, this prelate might have spent some few hours in reviewing, reconsidering and correcting those former imperfect memorials, from more credible after informations, relating to his noble benefactor's death. But for as much as those moral obligations to truth, justice and gratitude, could not prevail with this learned historian, fully and freely to declare that to be true, relating to my lord's death, which upon his best inquiry he had just cause to believe to be so. It will make many gentlemen to question the truth of some other parts of that History, notwithstanding by his lordship's humble appeal to the great God of truth, that prelate did (in effect) swear to the truth of all things by him related, within his own knowledge. And for his sincere belief of all things by him mentioned by information.

I do here beg the reader's pardon for repeating (in the following discourse) the proofs given in evidence for my lord's being murdered. But the reason of that repetition was this, (viz.)

In the first account given (in the subsequent discourse) of the proofs for my lord's being murdered, I had been more large in my remarks thereupon, than at first I intended to have been. And I was afraid that those many observations upon those proofs, might blot out the remembrance of some material parts of the evidence. I did therefore think that the reader would receive and retain a much better information of those proofs, when the substance of those proofs was contracted into fewer words. And therefore from page 120 to 149 I have repeated the substance, of what had been more largely expressed, in proof of the murder of that noble lord and great patriot Arthur earl of Essex.

BISHOP BURNET'S HISTORY, CHARGED, &c.

THE right honourable Arthur earl of Essex was committed to the Tower the 10th of July, 1683, by virtue of a warrant from Secretary Jenkins, which warrant ran as followeth:

'Sir Lionel Jenkins, knt. of his Majesty's most 'hon. Privy-Council, and principal Secretary of State.

'These are in his Majesty's name to will and 'require you to receive into your custody the

'person of Arthur earl of Essex, herewith sent 'you, being committed for high-treason, in 'conspiring the death of the king (whom God 'preserve) and conspiring to levy war against 'his Majesty. And him, the said earl of Essex, to keep in safe custody, until he shall be 'delivered by due course of Law: and for so 'doing, this shall be your warrant. Given 'under my hand and seal, at White-Hall, the '10th day of July, 1683. L. JENKINS.'

'To Thomas Cheek, esq.: Lieutenant of 'his Majesty's Tower of London.'

The first night his lordship lay at the said captain Cheek's; but the next day was removed to major Hawley's (then gentleman porter of the Tower) and the two warders, then placed upon his lordship, were Nathaniel Monday and Thomas Russel; one of these was to stand for two hours at my lord's chamber door, or in his chamber, and the other at the stair's-foot; and thus by turns. Paul Bomeny (a Frenchman, and pretended Protestant) was then my lord's valet de chambre, and he was permitted to be with his lordship, and no other servant of my lord's permitted to come into my lord's chamber. At major Hawley's my lord continued from Wednesday, the 11th of July, to Friday then next following, when, about nine of the clock, his lordship was found with his throat cut, through both jugulars, and arteries, even to the very neck bone. The next day, being Saturday, the coroner's jury sat, and before them were sworn the afore-said Paul Bomeny, the servant, Thomas Russel, one of the said warders, and two surgeons; whose four Informations are here printed, according to what was that very day printed, by public authority: but the printed information of Bomeny, essentially differs from what was written by Bomeny himself, and by him delivered to the coroner. And that information Bomeny was suffered, by the coroner and jury, to write in the next room, to the coroner and his jury; and, in that very next room, there were several persons with Bomeny, prepared to instruct him, in forging his information; and also those tutors then instructed the coroner how to manage his jury; for when some of the jury insisted upon seeing the cloaths, in which my lord was first found dead, the coroner was thereupon called into that next room, and, returning to the jury, then told them, It was the body, and not the cloaths, which they were to sit upon; the body they had seen, and that was sufficient. This was sworn by some of that jury, before the secret committee of lords. And when several of the jury proposed to the coroner, that they might adjourn this inquisition until Monday, and in the mean time my lady Essex, and my lord's relations, might have notice of that adjournment; so that if they could prove any thing in favour of my lord, to prove him murdered by others, such evidence might be heard. Thereupon major Hawley came out of the next room, and then pretended, that king Charles had sent an express for their inquisition, and that his majesty had declared he would not rise from council until that inquisition was brought him. But major Hawley, being asked by the secret committee who was this express, that pretended he came from the king, and thus hurried the jury into their inquisition. The major declared, that he knew of no such express, and that he never so informed the jury, and that he was not near the jury, at that public house, where they considered this matter all the time of that inquiry: but several of the jury swore it upon him. But none of those tutors, in that next room, were brought before the coroner's jury, by them to be examined. And all those before-mentioned informations, are here printed: but before I shall give you those informations, I think it proper to mention what measures were taken to prevent the coroner's jury from receiving all that information which was necessary to be given to them, in order to their making a just judgment, of the true manner of my lord's death.

All men know, that when a person is found, and by a violent death, destroyed, in a place where the body may remain safe, that the body ought to remain in that very posture, wherein it was first found dead, until the coroner's jury (who are to make inquisition into the manner of the death) have seen the body. But in the case of this noble, but unfortunate lord, and great patriot, the case was otherwise managed; for, on the very day my lord was murdered, major Hawley (at whose house my lord lay) ordered the body to be stript, and all the cloaths carried away, and both the chamber and closet (in which the body lay) to be washed.

This was done to prevent the coroner's jury from discovering the true manner of my lord's death: for had the body continued in that very posture, in which Bomeny, (my lord's valet) and his two warders, first pretended to have found my lord dead, that very posture, and together with the cloaths he wore, when murdered, would have proved, even to a demonstration, that his lordship was barbarously murdered. And of this, I believe, the reader will be convinced, when I shall here relate how that servant, and those warders, first declared my lord lay, when those his attendants first pretended to have found him dead. And I shall mention those signal marks of violence, to be discovered from some part of his cloaths: but I shall first relate how the coroner's jury were managed, to prevent a true and just inquisition. On the next morning after my lord's death, the deputy coroner, and his jury, came to my lord's chamber, and there lay the body stript, and all his cloaths carried away, and only a sheet over all the body, except the head and neck, where the large cut might be seen; and the room and closet were washed clean from the blood. After the coroner and jury, and two surgeons, hereafter mentioned, had once viewed the body, the coroner adjourned the jury, to a public-house

in the Tower, where the said Bomeny and Russell, and the two surgeons, were sworn and examined.

And the coroner, having sworn Bomeny, began to take his information in writing, and the coroner had writ as followeth, viz.

'The Information of Paul Bomeny saith, 'That the earl of Essex, on the 11th instant, 'did speak to this informant to bring him a 'penknife, to pare his nails, but the informant 'could not then get one. The earl of Essex 'called to him again on Friday the 13th instant, 'about eight of the clock in the forenoon, did 'again speak to this informant to bring him a 'pen-knife, to pare his nails; but this depo-'nent telling him that he had not one, his 'lordship commanded him to bring him a 'razor, which he did accordingly; and then 'his lordship walked up and down the room, 'scraping his nails with it, and this informant 'then left him, and coming about half an hour 'afterwards up into the bed-chamber, found 'his closet-door fast; whereupon this informant 'knocked at the door, and called, My lord, my 'lord; but he not answering, pushed the door 'a little open, where he did see his lord lying 'all at length on the ground in his blood, and 'the razor near him on the ground. And far-'ther deposeth, That he hath not any papers 'of his lord's, nor doth know where any of his 'papers or writings are: and also, that on 'Thursday night last was very merry at sup-'per, and did not seem to be discontented the 'next morning.'

The above Information is *verbatim*, as the coroner took it from Bomeney's mouth, and the coroner, upon his oath, delivered this Information to the secret committee: but the coroner did farther (upon oath) declare, That he [the coroner] proceeding to ask farther questions, Bomeny began extremely to hesitate, and thereupon desired that himself might write his own information, which was accordingly granted, and the said Bomeny was thereupon suffered, by the coroner and his jury, to retire from the coroner and jury into the next room, where several persons were ready prepared to assist him in forming his information; and having remained in that next room a considerable time, he then returned to the coroner and jury, and brought an information ready writ, and here-under printed and remarked, as it was first delivered by Bomeny to the coroner, and afterwards altered by the coroner in one place; and after that, and before it was printed by the then secretary of state, or some under clerk in some other parts of that information; for the coroner, that very Saturday, carried the inquisition and informations aforesaid, to the secretary's office, and that Saturday night they were printed by authority, and published the Monday morning following. Bomeny's second Information, with proper remarks, is as followeth: viz.

The INFORMATION of PAUL BOMENY, Servant to the late Earl of Essex for about three or four Years now last past, taken upon Oath, the 14th day of July, 1683, Anno Regni Caroli Secundi, Dei Gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ, Regis, Fidei Defensoris, &c. Tricesimo quinto, A. D. 1683.

'Saith, That when my lord came to captain 'Hawley's, which was the 11th instant, my 'lord of Essex asked him for a penknife to 'pare his nails, as he was wont to do, which 'this informant answered, being come in haste, 'he had not brought it, but he would send for 'one; and accordingly sent the footman, with 'a note for several things for my lord, amongst 'which the penknife was inserted, and the foot-'man went and gave the bill to my lord's 'steward, who sent the provisions, but not the 'penknife, and he told the footman he would 'get one the next day. When the footman 'was come, my lord asked if the penknife was 'come? This informant answered, No; but 'he would have it the *next day*. And accord-'ingly on the 12th instant, in the morning, 'before my lord of Essex was up, this inform-'ant sent the footman home with a note to the 'steward, in which, among other things, he 'asked for a penknife for my lord. When the 'footman was gone, about, or a little after 'eight of the clock, my lord sent one Mr. 'Russel his warder, to this informant, who 'came, and then he asked if the penknife was 'come? This informant said, no, my lord, but 'I shall have it by and by: to which my lord 'said, he should bring him one of his razors, it 'would do as well; and then this informant 'went and fetched one, and gave it my lord, 'who then went to pare his nails, and then this 'informant went out of the room into the pas-'sage by the door, [on Friday the 13th in-'stant]* and began to talk with the warder; 'and a little while after he went down stairs, 'and soon after came the footman with the pro-'visions, and brought also the penknife, which 'this informant put upon his bed, and thought 'my lord had no more need of it, because he 'thought he had pared his nails, and then this 'informant came up to my lord's chamber, 'about eight or nine in the forenoon [on Friday 'the 13th instant] with a little note from the 'steward [where there were three lines writ]† 'but not finding his lord in the chamber, went 'to the close stool closet door, and found it shut, 'and thinking his lord was busy there, went

* Note, what is here printed within these crotchets [ ] was not in the original, but added after it was delivered by the coroner to the secretary.

† The first of these two sentences, which are included in the [ ] was interlined in another hand; and the other was left out in the printed Information.

'down, and staid a little, and came up again, 'thinking his lord had been come out of the 'closet; and finding him not in the chamber, 'he knocked at the door with his finger thrice, 'and said, my lord, but nobody answering, he 'took up the hangings, and looking through 'the chink, he saw blood, and part of the 'razor, whereupon he called the warder, 'Russel, and went down to call for help, and 'the said Russel pushed the door open, and 'there they saw my lord of Essex all along the 'floor, without a perriwig, and all full of blood, 'and the razor by him. And this deponent 'farther deposeth, that the razor now showed 'to him, at the time of his examination is the 'same razor which he did bring to my lord, and 'which did lie on the ground in the closet by 'my lord.'

The INFORMATION of THOMAS RUSSEL, one of the Warders of the Tower, who had the custody of the Earl of Essex, taken the 14th day of July, Anno Regni Caroli Secundi, Dei Gratia Angliæ. Scotiæ, Franciæ, et Hiberniæ, Regis, Fidei Defensoris, &c. Tricesimo quinto, A. D. 1683.

Saith, 'That on Friday the 13th instant, 'about eight or nine of the clock in the fore- 'noon, he was present when he did hear the 'lord of Essex call to his man, Mr. Bomeny, 'for a penknife to pare his nails, and then for a 'razor, which Mr. Bomeny brought him, and 'then my lord walked up and down the room, 'scraping his nails with a razor, and shut the 'outward door. Mr Bomeny half a quarter of 'an hour afterwards, not finding my lord in his 'bed chamber, went down stairs again, believ- 'ing my lord was private in his closet: Bo- 'meny came up again about a quarter of an 'hour afterwards, and knocked at the door, 'then called, my lord, but he not answering, 'peeped through a chink of the door, and did 'see the earl of Essex lying on the ground in 'the closet, whereupon he cried out, That my 'lord was fallen down sick, and then this in- 'formant went to the closet door and opened it, 'the key being on the outside, and then did see 'my lord lie on the ground in his blood, and 'his throat cut.'

The INFORMATION of ROBERT SHERWOOD, in Fenchurch-street, Chirurgeon, taken the 14th day of July, Anno Regni Caroli Secundi, Dei Gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ, Regis, Fidei Defensoris, &c. Tricesimo quinto, A. D. 1683.

Saith, 'That he hath viewed the throat of 'the earl of Essex, and doth find that there is 'a large wound, and that the Aspera Arterias, 'or windpipe, and the gullet, with the jugular 'arteries, are all divided, of which wound he 'certainly died.'

The INFORMATION of ROBERT ANDREWS, of Crutched-Friars, Chirurgeon, taken upon oath the 14th day of July, Anno Regni Caroli Secundi, nunc Regis, Angliæ, &c. Tricesimo quinto, A. D. 1683.

Saith, 'That he viewed the throat of the 'lord of Essex, and doth find that it was cut 'from the one jugular to the other, and through 'the wind-pipe and gullet, into the vertebres 'of the neck, both jugular veins being also quite divided.'

The substance of these Informations, in short, is this, viz.

'That the earl of Essex called for a penknife 'to pare his nails, but the penknife not being 'ready at hand, his lordship desired a razor, 'which was delivered to him, with which razor 'his lordship retired into his closet, and locked 'himself in; but soon after the closet door was 'opened, and that lord there found with his 'throat cut, through the gullet, and both jugu- 'lars and arteries, to the very neck bone, and 'the razor (as before delivered) lying by him.'

These Informations thus published by authority, upon Monday next after my lord'r death, I carried to Wanstead, six miles from London, and there read them to one Mr. Evans, then an head-searcher at the Custom-house, and thereupon Mr. Evans told me that they had sworn false in relation to the razor's being found by the body, in the closet, when my lord was (as pretended) first found dead, for, said he, a bloody razor was thrown out of my lord's chamber window, before it was known to any out of the house that my lord was dead, which razor one William Edwards, a boy about thirteen years of age, endeavoured to take up, but a maid came out of Hawley's house, where my lord lay, and took up the razor and ran up stairs with it, and immediately cried out very loud, murder! murder! and this was the first time, and the first occasion of my lord's death being known to any out of the house. Upon hearing this relation, I declared, if this account of the boy was true, what was sworn before the coroner was false, and then my lord was murdered: For,

No man ever swore a lie, if a truth would serve his turn. And,

No truth needs a lie to support its credit. And,

Whosoever swears a lie, doth it to conceal a truth.

And I then declared that I would enquire into that matter, and therefore I then desired the said Mr. Evans to inform me where that young Edwards lived. Mr. Evans told me he lived in Mark-lane, by the Tower, and that his father was there well known, having been many years a Custom-house officer.

When I came to town that Monday, about 3 in the afternoon, I did inform some friends of what I had, as before, heard, relating to my lord's death, and I then declared that I would endeavour to discourse that boy, and his pa-

rents, relating to that matter. But all my friends, thus by me informed, then dissuaded me from farther meddling in, or discoursing either the boy or his parents in that affair; for, said my friends, the king and duke of York went to the Tower before 6 that very morning my lord died, and therefore if my lord was murdered, those persons, and that interest which were therein concerned, were too powerful for me to engage with, and I must expect nothing but ruin, in my fortune at least, if not murdered in my person: To all which dissuasives I generally then answered to this effect, viz.

That I was not ignorant of the great danger which attended me in making such enquiry, but if no man did stir in that inquisition, and that noble lord's death was universally believed to be procured by himself, then the probable consequence of such an universal belief of the (pretended) self-murder, might occasion the murdering many more noble lords, and other worthy patriots, whom they then had, or should take into custody: For it was but to place over such (intended victims) perfidious warders, as would perjure themselves, and consent to permit such murders; and then those in great power, for great rewards, and promised protection from justice, might procure bloody bravoes enough, under such great encouragements, as would murder our best patriots in such a manner, as their employers and instructers should think most proper for imposing upon the world the belief of self-murder; in order to which those prepared and treacherous warders (their immediate attendants) should be pre-instructed to swear, before the coroner and jury, whatsoever their tutors should think the most probable to make those juries, to find such prisoners *feloes de se.* And by the repeating such treacherous and cruel practices, some of our best patriots might be murdered. But if those powerful and bloody enemies to our Church and State, found themselves exposed, for this instance of their treachery and cruelty, they probably might be thereby discouraged from repeating the like barbarity upon other great patriots. And therefore I would chearfully expose myself to the greatest dangers, for those three following great and good purposes, (viz.).

First, For the exposing (though not otherwise punishing) that mighty man, who was the principal author of this murder. And,

Secondly, Thereby clearing the name and family, of this noble lord from an infamous imputation of self-murder. And,

Lastly, For the preserving many more of our greatest pillars (under God) to both Church and State, from such complicated cruelties, as destroyed their persons, blasted their memories, cast a reflection on their families, and forfeited all their personal estates.

Being thus resolved to make enquiry into this matter, I went that very Monday to sir Henry Capell (afterwards lord Capell, and brother to the earl of Essex) whom I found at my lord's house, in St. James's-square; I then informed sir Henry of what I had heard, concerning the throwing out of the bloody razor out of my lord's chamber window, before the death of my lord was known to any out of the house, where he died, and that the maid, who carried the razor into the house, ran up to my lord's chamber, and then cried out, murder! murder! And, thereby first discovered my lord's death to those out of the house. I then told sir Henry Capell, that if this relation of the boy was true, what was sworn by Bomeny and the warder before the coroner (as to the razor's being found locked into the closet with my lord's body) was false; and if my lord's servant and warder had sworn false to prove the (pretended) self-murder, it was to conceal some truths, which (if discovered) would have proved his lordship's being murdered by others, For,

No man will swear a lie, when a truth will serve his turn, And,

No man swears a lie, but to conceal a truth.

For no truth needs a lie to support its credit.

I then informed sir Henry that I myself had not spoken with that boy or his father, but that I would readily go, with any person, whom sir Henry should order to go with me, to discourse both that boy, and his parents, upon the relation aforesaid. Sir Henry (after some farther discourse) was pleased to say, that,

The then enquiry into that matter was too big for him to be concerned therein.

Whereunto I replied, that,

Nothing was too big for the truth.

And that I myself (under all hazards) would go and discourse both that boy and his parents, and if I found they would swear what was so reported, I would then apply myself to some magistrate, to take their informations.

Accordingly that very next Tuesday morning after my lord's death, I went to Mr. Edwards's house in Mark-lane, to whom I soon told the occasion of that visit, and desired Mr. Edwards and his family to give a very true relation of what the son had reported that Friday morning, relating to his seeing a bloody razor thrown out of my lord of Essex's chamber window, before my lord's death was known to any out of the house where my lord died.

Thereupon the old Mr. Edwards wept, and said that he should be ruined by that report But I replied, that my lord's father had suffered death, for his zeal in his majesty's service, and that his son (the earl himself) had been employed in great posts of honour and trust. And therefore if my lord was murdered by others, none, (in probability) would be so zealous for a discovery of that murder, as the king himself, from whom Mr. Edwards might hope for protection, from all other powers. After some farther discourse to that effect, Mr. Edwards, his wife and daughter, gave me a full account of what the son reported, as soon as he returned from the Tower, the morning of my lord's death: But that family, then informed me, that the boy himself was then at

school, from whence he would return about 11 o'clock; whereupon, I told the parents that I would be at their house that afternoon about 2 o'clock, and I did then desire these parents that the boy might be kept at home, so that I might have an opportunity to discourse the boy himself. Accordingly that afternoon I went again to that house. As soon as I came, the mother and daughters informed me, that the boy had denied his having seen that bloody razor thrown out of my lord's chamber window. I then enquired whether the boy had denied it before I had been there; and the mother and sisters all declared that the boy did not deny it, until one of his sisters (in a threatening manner) told him, that he would be hanged, for what he had, as before, reported, relating to the bloody razor's being thrown out of my lord of Essex's chamber window, and that his father would be turned out of his place in the Custom-house, and that all his family would be thereby ruined. But I then desired that the boy might be called into that room, where I then was with the mother, sisters, and some other friends and relations; and I then and there discoursed the boy concerning the nature and sinfulness of lying, and particularly in relation to his lying in the matter then in question, and I then told the boy (then about 13) that if my lord was murdered, and he knew any thing relating thereunto, which might tend to the discovering that murder, if he did not reveal it, (in order to the punishing those murderers) he became (in effect) a protector or skreen to those murderers, and thereby highly criminal before both God and man. I then asked the boy, whether he did remember he had read in the Acts of the Apostles, that Ananias and Saphira (husband and wife) were struck dead for telling of a lie.

The boy told me he remembered that passage. I then told him, that God was still the same lover of truth, and now hated lies as much as he did then, and could, for lying, inflict the same sudden death upon him, if, in a case of this consequence, he told a lie. I therefore charged him to speak the very truth in relation to what he had, as before reported; and if that report was a lie, he should then deny it, and never more report the same; but if it was true, he should neither be afraid or ashamed to speak the truth: The boy then confessed that what he had reported concerning the bloody razor was true, and that his sister by great threatenings, as before related, had frighted him into a denial, but he would ever after confess what he had as before reported. And one of his sisters did then confess that by her threats she made him deny what (as before) he had reported.

The next day I drew up, in the form of an information, what the boy and his mother could swear relating to the premises, and what I writ, relating to the premises, herein follows.

The INFORMATION of WILLIAM EDWARDS, second son to Thomas Edwards, of the parish of Allhallows, Barking, London, taken the 18th day of July, in the 35th year of the reign of our sovereign lord king Charles the 2nd, A. D. 1683.

'Saith, That the informant on Friday the '13th of this instant July, as he was going to 'school with his brother Edward, he heard 'that his majesty and his royal highness the 'duke of York, were going to the Tower, 'whereupon this informant left his brother, 'and went to the Tower to see his majesty and 'his royal highness; and when this informant 'had seen his majesty and his royal highness, 'this informant about nine o'clock in the 'morning, the same day, went to see my lord 'Brandon Gerrard's lodgings, and as this informant was standing almost over against my 'lord Brandon Gerrard's lodgings, between the 'lord Gerrard's, and the late lord of Essex's 'lodgings, this informant saw an hand cast 'out a bloody razor out of the said earl of 'Essex's lodgings; and this informant was 'going to take up the said razor, which he saw 'on the ground to be bloody, but before this 'informant came to the razor, there came a 'maid running out of captain Hawley's house, 'where the said lord Essex lodged, and took 'up the said razor, which she carried into the 'said captain Hawley's house: and this informant believes, that it was the said maid, 'whom he first heard cry out murder! And 'this informant further saith, that he heard 'the same maid say, to some which were 'about the door, after the murder was (as 'above) cried out, that she did hear the lord of 'Essex groan three times that morning.

The INFORMATION of Mrs. EDWARDS, wife to Thomas Edwards, &c.

'Saith, That about 10 o'clock in the morning, on Friday the 13th of this instant July, 'this informant's youngest son, William Edwards, aged about 13 years, came trembling 'to this informant, and in great amazement 'and horror, told this informant, that the earl 'of Essex had cut his throat in the Tower; 'and farther said, that he the said William 'Edwards, in the morning about nine o'clock, 'did see an hand cast a razor out of the said 'lord of Essex's lodging window, which razor 'he saw on the ground to be bloody, and the 'said William Edwards was going to take up 'the said razor, but before he came to it, there 'came a maid running out of captain Hawley's 'house, where the said earl of Essex lodged, 'and took up the razor, which she, the said maid, 'forthwith carried into the said captain Hawley's house, and soon after he the said William Edwards heard her, as he the said William Edwards did believe, cry out murder! 'And this informant farther saith, that the 'substance of what the said William hath

'sworn in his information, he the said William Edwards, on Friday last did declare to this informant, and her whole family, several times attesting it to be true, and several times since.'

This the boy declared he was ready to attest, but finding several justices of the peace unwilling to take any informations therein; I thought it proper to carry these informations to the then earl of Sunderland, then secretary of state. And accordingly, upon Thursday the 18th of July, about four o'clock, I delivered these informations of the boy and his mother, to whom the boy had discovered it, as soon as he came from the Tower. My lord Sunderland seemed much surprised, and after some pause, told me, that I should bring the persons (who were not then with me) the next morning, and if it were proper, he would take their depositions. The next morning, about nine or ten o'clock, I went with the boy and his sister, (the mother not being well) to whom the boy had likewise, as soon as he came from the Tower revealed what he had (as before) seen. As soon as I came to the secretaries office, I sent his lordship word, that according to his lordship's order, I did attend. Immediately upon which (before myself, or either of the informants were examined) Mr. Atterbury the messenger came to the office, and took me into custody; the only instance where such as came to give information, on the behalf of the king, were so treated (before any accusation against them) and some short time after, thus in custody, I was called in before the then king and council.

The first question, (by his then majesty) asked, was, what made me engage in that matter? To which I answered, That, I was altogether unrelated to, and unacquainted with that honourable family; so that there lay no more personal obligation upon me first to move, than upon any man whatever, who might have met with the like information; but it was my love to truth and justice first engaged me in it; and through the grace of God, my duty therein I would do, though death stared me in the face every step I made.

I cannot but here observe the carriage of the then duke of York, who with a concerned countenance, leaning his elbow upon the board, covered his face with his hand, upon which I did immediately imagine, that somewhat within did more trouble him, than all the trouble from without did me; for though I stood as a supposed criminal, I had reason to guess somebody else was the real one. I did then observe to his majesty the incoherence and contradictions sworn before the coroner by Bomeny and Russel, who were the persons that pretended to prove the self-murder before the coroner; upon which his highness called for those informations, but said nothing in answer: his majesty then took them, and said as little; but the then lord keeper North, having read them, went about to reconcile those incoherences and contradictions; upon which I did object against what his lordship said, as insufficient, and further urged the objections I had before made. His lordship seemed very angry that I made those reflections; but, with submission, I think, by printing the coroner's depositions, every man was in some sort appealed to, whether what was so sworn, and printed, was not sufficient to induce every impartial person (for such the coroner and jury ought to have been) that the earl of Essex did indeed cut his own throat; and the printing those great incoherences, and contradictory depositions, argued as great impolicy in the authority that published them, as the deposing them did villainy in the informants, or the believing them want of understanding (not to say honesty, integrity and impartiality) in the coroner, and most of the jury. After some time spent in the examination, I was ordered to withdraw into the secretary's office, and repeated orders given by the then king, that I should be kept close (perhaps that I might not hear the boy, or his sister examined) the boy was then called in, and at first (as I was afterwards informed) did not deny the truth of his information; but being not then past 13, and frighted by being before so great authority, he wept; upon which his then majesty stroked him upon the head, and said, did not you invent this to excuse your truanting? To which the boy trembling, answered, yes (this the boy declared at home after his examination). Then the sister was called, who declared how the boy, upon his first coming from the Tower, had informed her as before set forth, and though after threatened to be whipt, never retracted till Tuesday, when I having been there, his sister had frighted him into a denial, which as soon as I came the second time, he retracted, and stood to his first information, saying his sister had frighted him, and told him he should be hanged and his father would be undone; the fear of which made him deny it: she further declared, that she did verily believe they never knew or heard of me till the Tuesday after my lord's death, and that I never did give, or offer her brother one farthing, but still enjoined him to speak nothing but the truth, (this the sister did after declare was the substance of her examination.) After the sister's examination was over, I was the second time called for, and told by my lord keeper, that I would have suborned the boy to which I answered, that I was well satisfied of my innocency in, and abhorrence of all such practices, which in this case appeared impossible, seeing the relation of the boy was several days before I ever saw or heard of the boy; nevertheless I was ready to give what bail his lordship should be pleased to command; upon which I was ordered to give bonds with two securities in 2,000*l.* a-piece; this I did that very afternoon; but the omission of the under-secretary, in the form of these bonds, was very advantageous to me and my security; for whereas the condition of all council-bonds were to conclude, 'and in the mean time to be of the

good behaviour;' this clause in mine was left out, by which my friends were saved from that, which otherwise would (as you will afterwards find) have ruined them. Standing thus under 2,000*l.* to answer to an information of subornation, I thought I was in self-justice bound to make what further inquiry I could, to strengthen the boy's evidence. To which my lord keeper (without the least colour) suggested, I did endeavour to suborn the boy to swear. In this inquiry I was daily hurried up and down, and found most people afraid to discover what they knew relating to my lord's death. In a constant search after many particulars relating to this matter, (all which would be too tedious to repeat) I was likewise informed of a girl that had also seen the bloody razor, as before, thrown out of my lord's chamber-window; upon which I went to St. Katherine's, where the girl lived, and several persons being present, I took in writing what she could say herein, and what her aunt and one Mr. Glasbrook, to whom she related it as she came from the Tower, could testify; which relation was as followeth:

August the 8th, 1683. The INFORMATION of JANE LOADMAN, aged about 13 years, who did in the presence of these whose names are here under-written, declare as followeth.

'That the said Jane Loadman was in the Tower on Friday morning, the 13th of July last, and standing almost over against the late earl of Essex's lodging window, she saw a hand cast a razor out of my lord's window, and immediately upon that she heard shrieks; and that there was a soldier by my lord's door, which cried out to those within the house, that some body should come and take up a razor which was thrown out of the window; whereupon there came a maid with a white-hood out of the house, but who took up the razor, she cannot tell.

Witness 'JOHN BROOM, WM. SMITH.'

August the 8th, 1683. Mr. William Glasbrooke doth declare,

'That one Jane Loadman, aged about 13 'years, inhabiting in the same house where he 'the said William Glasbrook lodged, did on 'Friday the 13th of July last past, between 'the hours of ten and eleven in the morning, in 'the presence and hearing of him the said 'William Glasbrook, declare to her aunt, that 'the earl of Essex had cut his throat; upon 'which her aunt was very angry with her; 'whereupon she the said girl did declare, 'that she was sure of it. For she saw him 'throw the razor out of the window, and that 'the razor was bloody, and that she heard two 'groans, or shrieks (which of the two words 'she used, he the said William Glasbrook is 'not certain). Of this he the said Glasbrook 'is ready to make oath.

Witness. WILLIAM GLASBROOK.

Loadman's Aunt, MARGARET SMITH.

About this time I was informed, That the report of the earl of Essex's death was at Tunbridge, about nine of the clock that very morning he died, when as my lord's death was not known in the Tower till about nine: whereupon I rid to Tunbridge, but I found the person very shy, and unwilling to appear in the matter. I had no sooner returned to London, but I was told, the same report was at Marlborough, in Wiltshire, (about 70 miles from London) the very morning of the earl's death; whereupon I rid to Marlborough, resolving to trace the report as near as I could to the author. When I came to Marlborough, I met with one Jeremiah Burgis, whom before this I never to my remembrance saw or heard of; who declared, That the very morning my lord died, he was at Froome, in Somersetshire, (about 30 miles from Marlborough and a hundred miles from London) and being there at the Dolphin, he was informed that the earl of Essex had cut his throat in the Tower. I did desire Burgis to write a letter to the master of the house at Froome, to inform me (if he could remember) who it was that reported this at his house. I did at Marlborough likewise speak with one Lewis, who did also inform me, 'That about two of the clock the day the earl died, as he was riding up Husbands-hill, (about fifty miles from London) he overtook a gentleman, riding a very easy traveller's pace; and as they were discoursing of the news in the country, the gentleman said, he had heard a report of the earl of Essex, that he had cut his throat in the Tower: but the gentleman was altogether a stranger to him, and therefore he could not inform me how or where to find him.' With Burgis's letter I was riding to Froome: but when I came within six miles of the place, at a town called Bradford, I stopt at an inn-door to drink a glass of cyder; upon which, one Beach an attorney, (notorious in his country and generation) informed a justice of peace then there, That I looked like a disaffected person, by wearing band and cuffs, and therefore in that dangerous time I ought to be examined, upon which, the justice came out to examine me, and there came with him one who knew me, so that the justice seemed well satisfied: but Beach taking the justice aside, tells him, That he ought to be more strict, and search me; for by my wearing band and cuffs, it was plain I was disaffected to the government, (of this I have been often told by some then there); upon which the justice told me, He must search me. When I perceived this, I thought it proper to give the justice a particular account of the occasion of my being in the country; as also, what papers I had about me, which papers being read, after some debate, and advising with the said Beach, he made a warrant for my commitment, the form whereof, in the conclusion, was the most illegal I ever saw.

The Warrant ran in these words, viz.

Wilts. ss. 'To the keeper of his majesty's 'goal of Fisherton-Anger in this county, or his

'sufficient deputy, these. I send you herewithal the body of Lawrence Braddon, apprehended in the town of Bradford in the county aforesaid, this present 22nd day of August, taken upon suspicion of being a dangerous and ill-affected person to the government, and for refusing to give an account of his business in these parts, and for having letters of dangerous consequence about him. These are therefore, in the king's majesty's name, to will and require you, That upon sight hereof, you receive him the said Lawrence Braddon into your gaol, and him there safely keep, (not permitting him to have pen, ink, or paper, or person to converse or speak with him) until you shall receive further orders from his majesty and privy council. Hereof you are not to fail at your peril. Given under my hand and seal at Bradford, this 22d day of August aforesaid, Anno Regni Caroli Secundi' Angl. &c. 35. Anno Dom. 1683.'

It was long before I could prevail with the justice to let me hear my warrant read: but when I told him by the statute, [31 Car. 2,] I would have a copy of it within six hours after I was brought to gaol, he read it to me; finding the conclusion to be so arbitrary, I told him he could not justify his warrant; which should the jailor obey, I might be kept a close prisoner during life. For I was not to be admitted to pen, ink or paper, or converse, till the jailor heard from the king and council, without which I must perish in prison, without conviction or trial: I told him that all such warrants of commitment ought to conclude, 'till he be discharged by due course of law;' but the justice told me he would maintain the legality of his warrant, I was hereupon carried to gaol (about 30 miles distant from Bradford) where I found the keeper of more sense or honesty than either his worship or his cabal; for there were several attornies in the inn, when I was examined; (with whom Mr. Justice advised) for the gaoler told me, that notwithstanding the strictness of my commitment, I should discourse with whom I would, himself being by, and write to whom I would whilst he was present, and saw it. Thanking my keeper for this civility, I did immediately demand a copy of my commitment, and writ to London for my Habeas Corpus thereupon, which within some short time I received, and was brought to London to be bailed; but all the judges being out of town, I was, according as the statute herein directs, to be carried before my lord keeper (North); but his lordship ordered the gaoler to bring me before him at the council that afternoon; as soon as I appeared before his lordship, my lord seemed well pleased, at a supposed, but mistaken advantage he thought to have had against my bail; for his lordship smiling, told me, notwithstanding he did not expect that I should have had much regard to myself, yet he did believe I would have had that just respect to my bail, as not to ruin them by those new matters then to be laid to my charge. To which I answered, I knew not wherein I had prejudiced my bail, of whom the only thing required was my appearance the then next term, which (if God permit) I would do, and thereby indemnify them: No, replied his lordship (smiling) the good behaviour was likewise required; a notorious breach whereof appears in these matters you stand afresh charged with. I did humbly appeal to the bond itself, and in it's condition no good behaviour was required. For which omission his lordship was angry with secretary Jenkins, who transferred the blame thereof to his under-secretary. When his lordship found, that by this neglect my bail was slipt from his hands, his lordship was resolved to hold me fast enough; and therefore demanded bonds, with sureties, in twelve thousand pounds, for my appearance, and as much more security for the good behaviour. I did hereupon desire his lordship, that he would consider the statute upon which I then came to be bailed: and as that statute required, his lordship would consider my quality, and the nature of my offence: As for the first, I was a younger brother and my father living; and as to the second, the pretended crime, it was of the very same nature with that under which I stood bound with sureties in 2,000*l.* for my appearance. My lord Keeper replied, That according to the statute, he did consider both my condition and the offence, and regulated his demands accordingly; for had I been alderman of London, my quality answerable to the crime, for every 6,000*l.* his lordship would have demanded twenty; so that then I must have given 80,000*l.* bonds in bail and suretyship; which (to the best of my remembrance) is twice as much as I ever yet heard demanded of any nobleman in England, though under a commitment of high-treason. Whilst I was before the council, I desired his lordship, that some of those witnesses might be sent for out of the country, where the report was of the earl's having cut his own throat in the Tower, before his lordship was dead. Upon which, one of the lords of the council (to the best of my remembrance, the then marquis of Hallifax) said, 'This is just as it was in the case of sir Edmundbury Godfrey.' But the lord Keeper, I found, would not send for witnesses to prove what his business was industriously and oppressively to stifle. Not being able to comply with these hard terms, I was remanded to Wiltshire gaol.

But now, instead of being sent back to Wiltshire, I was turned over to Mr. Atterbury the messenger, where upwards of five weeks, I lay at no less charge than 4*l.* and odd money per week directly, besides other collateral expences; this being too great for my fortune to comply with, I was advised to remove myself to the King's-bench. And the then next term I was bailed; whereupon I renewed my inquiries after many particulars relating to my lord's death, and I did then endeavour to get the names of most of the soldiers upon duty in the Tower, that day my lord was murdered. I was in a constant inquiry after some of them; for I had reason by some information I had received,

to believe that not a few could speak, not only to the throwing out of the bloody razor, but the sending in the ruffians to my lord, and from whom those villains were sent. But as I spoke with any of those soldiers, I perceived them very shy, and denied to me, what they had before freely confessed to their intimate acquaintance; and afterwards told their friends, that the morning after my lord's death, their captain in the Tower commanded them, under severe threatenings, not to discover what they had observed, in relation to the death of the earl of Essex.

Whilst I was prisoner in the King's-bench, I (with the rest of the king's prisoners) was several times searched; but having still notice some short time before such search, I conveyed away such papers, as being seized, might have tended to my prejudice. But in such hurries, I lost a list of such names that could have declared that which was not a little material to this discovery.

In Hilary term, 33, Mr. Speke and myself were tried upon an Information; the substance whereof was, 'That whereas Arthur late earl of 'Essex, the 13th of July, (being prisoner in 'the Tower for high-treason, himself feloniously, and as a felon of himself, did kill and 'murder, and the day after, was by the coroner's inquest so found; the said Lawrence 'Braddon and Hugh Speke, well knowing 'hereof, but contriving, and maliciously, the 'government of our said lord the king, of this 'kingdom of England into hatred, disgrace 'and contempt, to bring, &c. did falsely, unlawfully, maliciously, and seditiously conspire, 'and endeavour to make the king's subjects believe, that the coroner's inquisition was unduly taken, and that the said Arthur earl of 'Essex, by certain persons unknown, in whose 'custody he was, was killed and murdered, in 'order to which they the said Laurence Braddon, and Hugh Speke, did falsely, unlawfully 'and unjustly, maliciously, and seditiously 'conspire, to procure certain false witnesses to 'prove, that the said Arthur earl of Essex, by 'the said persons unknown, was killed and 'murdered.' Vide Trial, p. 1127, of this Volume.

Observe, The Information doth not charge us, for endeavouring to suborn false witnesses; because to prove that some money, or other consideration must have been proved to be offered, or promised; which they being not able to prove, the information saith we did conspire to procure false witnesses. And yet, because subornation would represent the matter most odious; in the title page of the Trial, it was expressed, 'Upon an Information of high misdemeanor, subornation, and spreading false 'news.'

This Information charges Mr. Speke and myself with falsely, unlawfully, maliciously and seditiously conspiring to procure false witnesses to prove, that (the right Honourable) Arthur, late earl of Essex, was killed and murdered, by persons unknown, in whose custody he was; but to destroy this conspired charge of Mr. Speke, and myself, against those in whose custody my lord was (at the time of his death), the then king's counsel said, that they would give an account of the earl's death, how he murdered himself, and for that they had a cloud of witnesses (Speke and Braddon's Trial, p. 1130.) But when this cloud appeared, it consisted in Major Hawley (at whose house my lord was murdered) Russel the warder, (who then kept the chamber door) Bomeny my lord's servant, (then attending on his lordship) and Lloyd the centinel (who kept the outward door whilst my lord was murdered). Here are three (Monday being the fourth) of the men in whose custody my lord was, and consequently (according to the information) the very men, Mr. Speke, and myself, had conspired to charge with my lord's murder; and these very men, in whose custody my lord was, were like a cloud of witnesses brought to prove, that those men, in whose custody my lord was, did not murder his lordship, but that the earl himself, feloniously, and as a felon of himself, did kill and murder.

How very ridiculous would it have looked should the then court, or king's counsel, have thus spoke to those three witnesses, (viz.) "Gentlemen, you (being three of the men in whose custody my lord was at the time of his death) are designed to be charged by the defendants Speke and Braddon, with the murder of my lord; but we have thought it convenient and just by you to prove, that yourselves did not murder this unfortunate lord, but that, that lord himself, feloniously, as a felon of himself, did kill and murder, as upon only some of * your depositions he hath been already found by the coroner's inquisition, do you therefore upon oath but purge yourselves, and lay this murder to my lord's own door, and we will inflict exemplary punishment upon these defendants, whose conspiracy tended to the charging you as actors in it, or privy thereunto"

I do humbly conceive, that all this was virtually included in the examination of those witnesses, whose oaths were not only admitted to purge themselves, but to render such as criminals as should endeavour to charge them. Should the like be practised in protection of all accused, (I am well satisfied) no man would turn accuser.

If any shall say, these (being the men attending on my lord at the time of his death, and his lordship then a close prisoner) are the persons to be presumed privy to what was done by his lordship just before his death, and therefore the parties which as to that could be sworn.

I answer, as they were the men which were to be presumed privy to what was done by his lordship just before his death, because they were the persons whose stations were so near

* Bomeny's and Russell's Information before the coroner which are at large herein before printed, see pp. 1244, 1245.

his lordship, for this very reason they were the parties which were likewise to be supposed privy to what was done to his lordship, just before his death; and therefore admitting that his lordship fell by treachery and violence, these very men must be presumed conusant thereof. Wherefore these mens' testimony being in effect a self-discharge, ought not here to have been admitted.

With all submission to that great justice, judgment and policy, which drew and managed this information against Mr. Speke, and myself, I think herein the managers of this prosecution extremely failed in their proof; for Mr. Speke, and myself, being accused with falsely, &c. conspiring to charge those in whose custody my lord was, with murdering my lord; the duty incumbent upon the then king's (or rather duke's) counsel was to prove, that we, or one of us, did use indirect means, by bribes, threats, or the like, to procure those false witnesses; and this (or whatever else was brought to prove this information) ought to have been deposed not by such as appeared in court (in effect) with halters about their necks to swear for their own lives; being virtually told, This do, and you shall live; but in the day ye fail thereof, ye shall surely die: But this information ought to have been testified by men who stood *recti in Curia*, which were neither themselves to be hanged for murdering my lord, provided they would not (by consequence) prove he did murder himself; or to be not only saved, but well rewarded in case they did (though contradictorily) confirm the same.

As for all those witnesses which were produced against us, to prove any bribes or the like, I do suppose prejudice itself will not pretend to say, that by the Trial (which none can believe sir George Jefferies would order partially, in our favour to be printed) the least colour of proof, is given by any.

That nation is happy whose government answers the true end of governors, viz. 'To be 'terrors to evil-doers, and a praise to those that 'do well;' but when once this end is inverted, and justice (or rather that which a corrupt court falsely calls so) becomes a screen to malefactors, and punishment inflicted on those who would punish them, then is that kingdom in a much worse condition than it could be by the state of nature. For justice thus corrupted, would prove as fatal to the body politic, as the poisoning all drugs, simples, &c. would to the body natural.

This by the perversion of all law and justice would probably have proved our general fate, had not God (in mercy) by the Revolution, removed the source hereof.—But to return to my trial, where I did expect all that the most inveterate and malicious rage could utter, and therefore was not surprised with all that fury, and unjust inveteracy, that appeared in Jefferies the then chief justice.

In this verdict I only am found guilty; (could such a thing be possible of a conspiracy to procure false witnesses.)—It was never before known that only one could commit a conspiracy. For the notion of a conspiracy I take to be the combining together of two or more to do that which is ill. Upon this verdict Mr. Speke was fined 1,000*l.* and (because the court said I was the greatest criminal,) my fine was 2,000*l.* and both ordered to give security during life.

But Mr. Attorney-general at the trial was pleased to do me the justice to say, that Speke's letter produced at the trial was ten times worse than what I had done.

Some witnesses (at my trial subpœnaed) would have mentioned several matters, relating to the then duke of York's guilt, in relation to this murder; but I found it was a truth too great, which that court would not hear, and therefore thought it not proper to call them, but left them till such a season wherein truth in this matter should not be prosecuted as the highest offence.

And this brings me to the Proofs that have in this case been taken in 1688 and 1689, before the Secret Committee appointed by the House of Lords. But before I do begin with the evidence it may not be amiss to give some short account how this case came before that right honourable House, where it was occasionally brought, upon the motion of the right honourable the lord Lucas, then governor of the Tower.

For the day before the convention sat, viz. the 21st of February* 1688-9, having a warrant against several as suspected privy to, or concerned in the murder of this honourable patriot, and amongst the rest against major Hawley, at whose house my lord was murdered, and Russel the warder before mentioned; both which belonged to the Tower: I desired a friend of mine to acquaint the honourable governor therewith, so that these persons might be secured. As soon as the lord Lucas saw the warrant against these two, he did order them both to be secured; and the next day there was several depositions, with relation to my lord's murder, taken before justice Robins, who that very day carried copies of them to my lord Lucas; upon which, his lordship the very next day moved the House of Lords for their lordships directions as to the disposal of Hawley and Russel, and thereupon produced these informations Mr. Robins had before brought him. Upon reading of these, the House entered into a debate of the matter, and then called me before their lordships, before whom I gave a short account of what is as before most materially mentioned. After which, their lordships constituted a more general Committee, having several times met, there was a close Committee appointed; the Order for which followeth:

* This seems to be erroneously put instead of January. The Convention sat on January 22, 1688-9. See 5 Cobbett's Parl. History, p. 26.

The Order for the close Committee.

Die Martis, 5 Februarii 1688-9.

'Lords Committees appointed by the House 'to be a close Committee, to examine and take 'Informations concerning the death of the late 'earl of Essex, and have power to send for 'and examine what persons they please, and 'such affidavits, as have been already made in 'this business, as also for what other they 'please, in order to give their lordships further 'light therein, whose lordships are to make re-'port thereof to the House.

'E. BEDFORD.
'E. DEVONSHIRE.
'L. VISC. MORDANT.
'L. DELAMERE.'

'Whose lordships are to meet when, and 'where, and as often as they please.'

Before this right honourable Committee, there have been above sixty persons examined, of which most were examined upon oath, and many of these several times before this Committee, which have sat above thirty times, and several times adjourned, when other extraordinary occasions hindered their lordships from taking the depositions of such as then attended to be examined. In May 1689, three of the four lords of this Committee, viz. the earl of Devon, the lord Mordant, and the lord Delamere, being commanded by his majesty into the country to purge that part of the army which had mutined in the North, the earl of Devon (being chairman of this Committee) the 22nd of May 1689, brought such depositions and examinations, as in this case had then been taken, into the House: But the House not having time that day to read them, it was deferred till the then next day. Upon the reading of them (it appearing, that the earl of Devon, the earl of Monmouth, and the lord Delamere were as above absent, for the earl of Devon that very morning went into the country, their lordships thought fit to suspend the full examination of the matter, till these three lords returned. This appears by the Order following.

'Die Jovis, 23 Maii 1689.

'After reading several papers and deposi-'tions relating to the death of the late earl of 'Essex, it is ordered by the Lords spiritual and 'temporal in parliament assembled, That the 'considerations of this business shall be sus-'pended, until the return of the lord Steward, 'the earl of Monmouth, and the lord Dela-'mere, who were of the Committee before 'whom they were made, and who are now in 'the country in his majesty's service. And it 'is further ordered, That the said depositions 'and papers shall be sealed up, and kept by 'the clerk of the parliament in the mean time.'

'JOHN BROWNE, Cl. Par.'

These Depositions lay sealed up with the clerk of the parliament, till the 26th day of October, when their lordships of the Secret Committee moved for reviving that Committee, which the House revived by this Order.

Die Sabbatis, 26 Octobris, 1689.

'Ordered by the Lords spiritual and tem-'poral in parliament assembled, That the Com-'mittee appointed, on the fifth day of Fe-'bruary, to take information concerning the 'death of the late earl of Essex, be, and is 'hereby revived, to continue and sit as before.

'JOH. BROWNE, Cl. Parl.'

Several other persons were now examined before their lordships, who having finished their examinations, they began to reduce those depositions and examinations into such order, as to their lordships should seem most meet, but this was not finished, before the 27th day of January, when that parliament was prorogued, and the 6th of February dissolved, and consequently all proceedings hereupon stopt.

The substance of what hath been deposed before the honourable lords of the Committee, and some justices of the peace, I shall, in as short an abstract as I can well reduce it, here give you; in which I shall observe, for the most part, as it falls out in order of time; and first, what passed before my lord's murder; secondly, the day of his death; thirdly after his death.

As to the first, before my lord's murder; it is deposed by Dorothy Smith to this effect: 'That about nine days before my lord's death, 'being servant with one Holmes, in Baldwin's-'Gardens, and standing upon the kitchen-'stairs, she heard several papists discoursing '(in the parlour of the said Mr. Holm's 'house) concerning the taking off the earl of 'Essex; and it was then and there declared, 'that they had been with his highness, and his 'highness was first for poisoning the said earl; 'but that manner of death being objected 'against, it was proposed to his highness, that 'the earl should be stabbed; but this manner 'likewise not being thought proper, his high-'ness had concluded and ordered his throat to 'be cut, and his highness had promised to be 'there, when it was to be done. About three 'days after this, (viz.) about six days before 'the earl's death, some of the aforesaid per-'sons met again, at her said master's house, 'where she heard them declare to this effect, 'that they had resolved the earl's throat should 'be cut; but they would give it out, that he 'had done it himself; and if any should deny 'it, they would take them up, and punish them 'for it. This informant being hereupon much 'troubled in her mind, and willing to prevent '(if possible) this intended mischief, did here-'upon advise with one Mr. Billinger, who told 'her: that if she valued her life, she should 'not discover it to any; for the papists then 'carrying all before them, she was ruined if 'she did. Wherefore she did not, before my 'lord's death (to her remembrance) discover it 'to any other, unless she might to Mrs. Bil-'linger, in which she cannot be positive; but

'the day of my lord's death, about two or three 'o'clock the same day, some of the aforesaid 'consult coming to her master Holm's house, 'one leaped about the room, as extremely 'over-joyed, and strikes the said Mr. Holms 'on the back, and cried, the feat was done, or 'we have done the feat; and further said, he 'could not but laugh, to think how like a fool 'the earl of Essex looked when they came to 'cut his throat.' She further saith, 'That 'about one year after that, she living with one 'Mr. Rowden, was willing to discover what she 'had, as before heard, to her said master Row-'den, but he was not free to hear all she could 'say, with relation hereunto, but advised her 'to hold her peace; for, by such her dis-'course, she might ruin him and all his family.' This is further confirmed by the oaths of Mr. Rowden, Mrs. Rowden, and Mrs. Mary Rowden: and Mrs. Rowden doth further depose to this effect; (viz.) 'That the said Do-'rothy Smith, in king James the second's reign, 'hath declared, that she did hope to live to 'see the day, wherein she might fully testify 'her knowledge herein; and this she would 'do, when she might without danger.'

Mr. *Adams* and his wife have deposed to this effect: 'That November 1686, this Do-'rothy lived with them as their servant; and 'in tears hath often declared her over hearing 'the papists consult of my lord of Essex's 'murder, several days before his death, and 'by whose order the earl was to be murdered: 'but these informants knowing the danger of 'such discourse (the late king James being 'then in so great power) did advise her, for 'her own safety, and the safety of those she 'lived with, not thus to discourse: but the said 'Dorothy, in tears did usually answer, that it 'lay upon her mind, night and day; and she 'could not be quiet in her thoughts, that the 'earl of Essex should be falsely charged with 'cutting his own throat, when she had heard 'the papists resolution to cut it themselves, 'and after own they had done it. And if ever 'she might, with safety testify the truth 'herein, she would; and did hope those men 'that did it, might suffer for it.'

Richard May deposeth to this effect: 'That '(to the best of this informant's remembrance) 'before the death of king Charles the second, 'observing Dorothy Smith to be very melan-'choly, he desired to know the cause; upon 'which she said, That somewhat she knew 'with relation to the death of the late earl of 'Essex, was the cause of her trouble; and it 'was not safe for her to reveal it to any. Upon 'which, this informant advised her then to be 'silent in the matter. But about the begin-'ning of February, after king William's com-'ing, finding it safe for the said Dorothy 'Smith herein to declare her knowledge, this 'informant went to the said Dorothy Smith, 'and told her, she might safely speak what she 'knew, as to my lord's death; upon which, 'the said Dorothy Smith told this informant, 'how she had heard the papists, several days 'before my lord's death, declared how the earl's 'throat was to be cut, and by whose order, '(with several particulars in relation there-'unto); upon which, this informant, disco-'vered this to Mr. William Tornay, who there-'upon told this informant, he would reveal this 'to Mr. Braddon, then upon the prosecution of 'my lord's murder; and some short time after, 'Mr. Tornay told this informant, that he had 'therewith acquainted Mr. Braddon, and de-'sired this informant, with the said Dorothy 'Smith, to meet the said Mr. Braddon, and 'the said Mr. Tornay, such a time, at the 'Cross-Keys in Watling-street, where they 'met accordingly: but when Mr. Braddon 'had been particularly informed herein, by the 'said Dorothy Smith, the said Mr. Braddon 'declared, that unless the said Dorothy could 'make it appear, that she had long before re-'vealed this, he would esteem it as a new-'made story, and a lie. Upon which, the 'said Dorothy mentioned the names of several, 'to whom she declared she had long since re-'vealed it; but by all was enjoined to secrecy.'

Mr. William Tourney hath likewise deposed what herein relates to him. And I am ready to depose, That I never heard of this Dorothy Smith, till Mr. Tourney about February 1688, informed me of her; and I never to my remembrance, saw the said Dorothy Smith, till the said Mr. May, had (as before) brought her to the Cross Keys, in Watling-street, where I first discoursed her. Here are five or six witnesses prove the very substance of this evidence, revealed when it was little less than death to discourse it, which clearly proves it is not a made story, and strongly argues the truth of the relation; for it can hardly be supposed; that this woman, should often, under the greatest concern and danger imaginable, declare any thing of this nature, unless the relation was really true; because she could (rationally) then propose no advantage by this story; but was still told, and convinced of the danger. Wherefore it is rational to suppose, that only the power of truth moved her to declare what she so often in tears related. But as a further argument of the truth, of this deposition, I shall briefly relate what informations have been taken in contradiction to this relation, and how these informations have been detected as false in every particular, which corroborates the truth of the accusation: for as a true defence detects and frustrates a false charge; so a false defence (being discovered to be such) as strongly strengthens a true one. The Depositions, in opposition to Smith's evidence, were,

Dorothy Hewits (a most violent papist) who the 9th of April, 1689, before Mr. Justice Dolben deposed, 'That in April before, my 'lord of Essex's death, the said Dorothy 'Smith was turned away from Mr. Holmes's, 'upon suspicion of having stolen a silver spoon; 'and that from April 1683, to nine months

'next after, one Elizabeth Christopher, then 'Elizabeth Cadman, was servant to the said 'Mr. Holmes, and no other maid-servant in 'all that mean time.'

Elizabeth Christopher, (of a very loose character) who, in this particular upon oath, the 9th day of April, 1689, before Mr. Justice Dolben, confirms Hewit's testimony; but that these two are forsworn, appears by many detions. For,

It is proved by *Robert Bond*, that Dorothy Smith did not go to Mr. Holmes's service, till the beginning of June, 1683, and that green beans were fit to be eat, before she left that service, in which she lived, just before she went to Holmes's house.

It is further proved, by five witnesses, (Elizabeth Morris, Ann Duphine, Catherine Coldam, Sarah Douthwait, and Robert Bond.) That Dorothy Smith was servant at this Holme's, in 1683, when green-pease were very plenty and cheap (which is naturally evident it must be in the latter end of June, or sometime in July, which is about two months after Hewit swore Dorothy Smith was turned away;) and it is positively sworn by one, that Dorothy Smith was servant in Holmes's house, in July 1683, after the death of the late earl of Essex; and this informant remembers the time, by a very remarkable particular. So that here are five or six depositions in contradiction to Hewit's and Christopher's evidence, which was designed to destroy the credit of Dorothy Smith's testimony; but this opposition thus detected, adds strength to what it was designed to prejudice. But it was further sworn by Hewit, that the 6th of July, 1683, (which was the Friday in the week before my lord's death) she went with the said Mr. Holmes into the country, and the first night lay at Wickham in Buckinghamshire, the next night at Oxford, and continued there till the 9th; and the 9th, this informant went with the said Mr. Holmes to Alderminster in the county of Worcester, to the house of one Mr. Nathaniel Swan, minister of the said town. and continued there till the 23d of the said month of July, and then returned, &c.

Nathaniel Swan, Clerk, deposed before Mr. Justice Dolben, the 9th of April, 1689. 'That 'about the 9th of July, 1683, Hewit and 'Holmes came to his house in Alderminster, 'and continued there till about the 23d.'

This last information is of little force (though the person designed well) for he swears, 'about' such a time Holmes came to his house, and 'about' makes the time very uncertain.

This was designed to destroy that part of Dorothy Smith's testimony, which declares Holmes in town, the day my lord was murdered.

When I found Mr. Holmes endeavoured to prove (as before sworn by Hewit) himself out of town, from the 6th of July, 1683, to the 26th or 27th of the same month; I did endeavour to enquire out all such, as either Mr. Holmes, or Mrs. Hewit were well known to, or traded with; and therefore I made inquiry after those, with whom (in that month and year) they bought of, or sold to, all shopkeepers, taylors, butchers, fishmongers, shoemakers, hatters, &c. And I did also inquire after all such as they (as japanners) bought goods of, or sold goods to, and such, as upon enquiry, I received such characters of, as I might expect fair satisfaction from, I did desire to see their books in that month of July, to see whether any goods were bought in town by the said Mr. Holmes, or Mrs. Hewit (for proving Hewit in town, proves Holmes likewise in town, because it is sworn and can be proved, they both went out of town together) or any money paid between the 6th and 26th of July, by either of these. After a very long and tedious inquiry (all those tradesmen being altogether strangers to me) I providentially met with one Mr. Welstead, who very readily shewed his book, wherein is entered according to his information, which followeth;

John Welstead of St. Dunstan's, in the West, London, before the Secret Committee hath deposed, 'That in July 1683, he lived in Poppin's-alley, nigh Fleet-street, very near Mrs. 'Dorothy Hewit, and often wrought for the said 'Mrs. Hewit, and between Monday the 9th of 'July 1683, and Monday the 16th of the same 'month and year, this informant made, or 'caused to be made, a dust-gown for the said 'Mrs. Hewit, as appears by this informant's 'book, to their lordships produced, and the 'very same week, (viz.) between Monday the '9th of July, 1683, and Monday the 16th of 'the same month and year, (but in the very 'day this informant is not certain); this informant carried the said gown to the said Mrs. 'Hewit, who did then pretend she was about 'going into the country; but how long after 'the dust-gown so delivered, the said Mrs. 'Hewit did go into the country, this informant 'knoweth not.'

This book had not been of any use to Mr. Welstead for almost 5 years, and it was a very great providence this had not been torn out, seeing the book for some years had been used as waste paper, and the very next leaf to this torn out, and lost. As soon as Mrs. Hewit understood such a taylor's entry was against her oath, she, with Mr. Holmes's wife, went to this taylor and desired to see his book; which being shewed; Hewit first pretended this entry was forged, and new; but when in answer to that, Mr. Welstead declared he could depose, "That the entry was real;" it was then pretended that the gown was sent into the country after Mrs. Hewit, but when in answer to that, Mr. Welstead declared he could depose, "That Mrs. Hewit was in town when that dust-gown was made and delivered, and that she then pretended she was about going into the country," Mrs. Hewit told him, if he did swear that, he would take off her brother's life, and Holmes's blood would be upon his head.

Some time after my lord's murder, this Holmes abusing his wife, she told him, 'He 'was a murderous rogue, and he well knew 'she could hang him when she pleased.' To which Holmes answered, 'That he little 'thought she would have spoken of it, who of 'all the world had the least reason:' For, said this scurrilous fellow, 'You bitch, you whore, 'don't you remember I bought you a good 'satin gown and petticoat, and therefore you 'above all the world ought not to prate.' But she replied, 'He was a murderous rogue for 'all that.'

I have been the more large and particular in this evidence, as well because it hath met with such villainous opposition by false oaths, as for that it alone proves by what party, and by whose order, this unfortunate lord was treacherously murdered.

The next thing previous to my lord's murder, are the several reports in many places in England, (before my lord's death, or before it could be known) that the earl of Essex was dead.—This is proved by 8 witnesses, Mr. Hubland, merchant, Mrs. Hubland, Mrs. Meux, Treherne, Jeremiah Burgis, Thomas Feilder, Savage, Mr Butler. It is as to this sworn, 'That at Frome, (which is about 100 miles 'from London) it was reported the very next 'morning after my lord's commitment to the 'Tower, (viz.) the 11th of July, 1683, that the 'earl of Essex had cut his throat in the 'Tower:' And this informant, the week after my lord's death, meeting the gentleman which had before given him this information, and desiring to know how before my lord's death, he could declare it, the other replied, That all men concluded my lord would either cut his throat, or turn evidence against his friend my lord Russell; but it was generally believed that my lord would rather destroy himself, than be made a witness.

This report so far off the very next morning after my lord's commitment, proves the Tower to be the place (before my lord's commitment) pitched upon as the most proper for this perfidious tragedy.

But the very next day (viz.) the Wednesday after my lord's commitment, was it reported about 60 miles off, that the earl of Essex had cut his throat in the Tower, for this reason, (viz.) The king and duke coming into the Tower to view the Tower, the earl of Essex was afraid the king would have come up into his chamber, and seen him; but his guilt and shame was such, that he could not bear the thoughts of it, and therefore cut his throat to avoid it.

Observe in this previous report, 60 miles from London, the next day after my lord's commitment, the very pretended reason for the self-murder is given; which reason carries in it, an accident that could never be before reported, or indeed expected, but by those which were the most secret in this treacherous cruelty; for herein is it said, the Wednesday before the king and duke went to the Tower, that the king and duke were in the Tower when the earl cut his throat, &c. It is notorious that the king and duke did not go till Friday morning, and their then going was a surprize to their very guards, for it seems they had not been there together above once before that, since the Restoration. In short, these several reports proved by 8 witnesses, all agree in the manner how and place where; and one more particularly sets forth the pretended reason wherefore. I do therefore humbly submit to every impartial reader, whether these very reports do not strongly prove, that the manner, place, and pretended reason to be given out in report, were all agreed upon before this barbarous complicated tragedy was acted. For otherwise, how could it possibly be so particularly related so far off, and so long before it was done?

But the reason of this report, appears to have been occasioned by what follows, (viz.)

The lord Russell was ordered to be tried upon Monday the 9th of July, which was four days before he was tried, and the contrivers of this treacherous cruelty against my lord of Essex, had resolved, that upon the day of that trial, and whilst my lord Russell was trying, my lord of Essex's throat should be cut, and then that report carried to the court trying my lord Russell, and to be then and there used as (it afterwards was) as an argument of the truth of the then (pretended) Plot, upon which my lord Russell was trying.*—Now some of the Popish party, who were let into the knowledge of the designed murder of my lord of Essex, and that it was to be done, when my lord Russell was trying, and knowing my lord Russell was ordered to be tried, the Monday next before he was tried, and those Papists, who first reported my lord of Essex's death, not knowing that the lord Russell's trial was put off, to the Friday then following,—Did therefore report my lord of Essex's death, two days before he was murdered.—And upon the reversal of my lord Russell's attainder, several of his jury were examined before the Lords, and some of those very jury-men, did then and there declare to their lordships, that as the then king's councal misapplied the (pretended) self-murder of the lord of Essex, in relation to that pretended Plot, by saying it was more than a thousand witnesses of the truth of that treasonable conspiracy, for which my lord Russell was then trying—that this report, and the above misapplication thereof had a greater influence upon them, he found my lord Russell guilty, than all that was sworn against him by the king's witnesses.

I shall in the second place observe what passed in the day of my lord's murder, which proves his death to be such.

Bomeney and Russel before-mentioned, did before the coroner's jury upon oath deny that any men were let in to my lord that morning my lord died. The like did John Lloyd, the

* See p. 602, of this volume.

soldier that kept the outward door, depose, at my trial, (page 1202.)

Nathaniel Monday, who was my lord's other warder, and likewise Russell, before the lords have denied that any men were, that morning let in to my lord. But that there were some ruffians a little before my lord's death let in to murder him, plainly appears by the proofs following.

Mr. *Samuel Story* deposed before their lordships, to the effect following, (viz.) 'The 21st 'of January, 1688, being the day before the 'convention sat, John Lloyd centinel upon the 'earl of Essex (at the time of his death) was 'taken up as suspected privy to the said earl's 'murder; and being therefore in custody the 'said Lloyd, with tears in his eyes, wrung this 'informant by the hand, and declared, That by 'special order of major Hawley, or one of my 'lord's warders, he did let in two or three men 'into the earl's lodgings just before his death; 'and he was very sure, and could safely swear 'that major Webster (then there in custody, 'suspected as one of the ruffians that murdered 'my lord) was one; and that as soon as he so 'let them in, he heard a noise in my lord's 'chamber, and somewhat thrown down like 'the fall of a man; soon after which it was 'said, the earl of Essex had cut his throat.'

This Lloyd, (the same day) before the justice, did confess the letting in some men a little before the earl's death, as appears by his examination following.

The EXAMINATION of JOHN LLOYD, of Goodman's Yard, in Aldgate Parish without, in London, Clothworker, taken before John Robins, esq. one of the justices of the peace for the county of Middlesex, the 22nd day of January, 1689.

'This Examinant saith, on the day wherein 'the right honourable the late earl of Essex, 'was found dead, upon the suspicion of having 'been murdered in his lodgings in the Tower 'of London; he then being a soldier, was 'standing centinel at the door of the said earl's 'lodgings, and had order to let nobody up-'stairs to the said lodgings, without leave from 'major Hawley, or the warder then in wait-'ing on the said earl; and that about half an 'hour after eight of the clock in the morning 'of the said day, two men (to this Examinant 'unknown) knocked at the hatch-door, be-'longing to the said lodgings, and by permis-'sion of the said warder, entered the said lodg-'ings; but when they came out, he can give 'no account; and that about nine o'clock he 'heard a struggling on the said morning, and 'a little time after heard a crying, My lord is 'dead.'

After Lloyd had lain some time close prisoner in Newgate, he did desire to see one Mr. Tempest a neighbour of his, who having permission of the Secret Committee to discourse Lloyd, thereupon went to Newgate, where he found the said Lloyd very melancholy; when Mr. Tempest first came, Lloyd told him, that he did hope, as he was his neighbour, he would be his friend, and true to him; to which the other answered, that he would, if the said Lloyd was ingenuous in his discovery; whereupon, the said Lloyd (after often pressing the said Mr. Tempest to be true to him) told him that when he was first seized, he did confess to a gentleman, who was altogether a stranger to him, the letting in some men in to my lord of Essex just before his death; and this confession did lie upon his conscience, and troubled him night and day; upon which the said Mr. Tempest replied, That the like he had confessed to several the same day he was taken; and he declared the same before a justice of peace; but if it was false he ought to retract it, and be sorry for having said it; whereupon the said Lloyd renewing his request, that the said Mr. Tempest would be true to him, said, it was indeed very true, but it was what he should not have confessed.

Lloyd did then further declare, 'That upon 'the letting in those men, there was so great a 'bustle in my lord's chamber, that the said 'Lloyd would have forced in after them, but 'the warder had made fast the outward door, 'so that he could not; and that upon the bustle 'he did hear somewhat thrown down like the 'fall of a man, which, he did suppose was my 'lord's body; and soon after, it was cried out, 'that my lord of Essex had cut his throat.' This is the substance of what Mr. Tempest hath deposed before the Lords.

By this it appears more than probable, not only that my lord was murdered, but that there was some villainous oath of secrecy entered into by those concerned therein, not to discover what they knew with relation thereunto; for what other as likely reason can be assigned for Lloyd's being troubled in conscience (as he pretended) for having confessed, what at the same time, under repeated injunctions of secrecy, he confirmed to be true, though he said he should not have confessed it.

But to put this matter beyond all doubt, that some men were bustling with his lordship just before his pretended self-murder discovered, evidently appears by this information following.

Martha Bascomb declared, and before the lords in substance hath deposed, 'That a little 'before the death of the late earl of Essex 'was discovered, this informant was walking 'up before the earl's chamber-window, and 'hearing a very great trampling and bustle in 'my lord's chamber, this informant stood still, 'and looking to the window of the said cham-'ber, saw three or four heads move close toge-'ther, and heard one in the chamber (which 'seemed to be in this bustle) cry out very loud, 'and very dolefully, Murder, murder, murder. 'This informant not then knowing it to be my 'lord's lodging, nor thinking any other of this 'cry, than what might be occasioned by some 'accidental quarrel, walked up towards the 'chapel, but not out of sight of the lodgings,

'and about a quarter of an hour after (or less) 'it was first cried out in the house, That the 'earl of Essex had cut his throat, and being 'shewed the chamber where the earl lay, she 'found that was the chamber, where she saw 'the men, and heard the bustle, and murder 'cried out, as before related.' This Informant further saith, 'That some few days after this, 'telling Mr. Perkins and his wife (whom she 'then kept in her lying-in) of what she had 'seen and heard, as before declared; the said 'Mr. Perkins advised her not to speak of it, 'for her divulging it, in all probability would 'prove her ruin.'

Mr. Perkins hath upon oath confirmed the latter part of Martha Bascomb's information, which clearly proves this not a newly-invented story.

I think this proof is little less than ocular evidence of the murder; for my lord was a close prisoner, to whom (as was pretended, and sworn, by such as kept the chamber-door) none was admitted that morning; but that my lord cut his throat in all silence; whereas it is here deposed, that several were bustling together in my lord's chamber before his death; (and this part agrees with the confession of the centinel, who let in the ruffians) and one in this bustle (which can be presumed to be no other than my lord) cried out several times very loud, and very dolefully, Murder, murder, murder.

And as a farther confirmation of these men's being (and by whom) sent to murder my lord, *Elizabeth Gladwin* and *Sarah Hughes* declare, and before the Lords in substance have deposed 'That the day of the death of the late earl of 'Essex, (viz.) the 13th of July, 1683, about 'eleven of the clock the same day, one Ruddle 'in the hearing of these informants, did declare, 'That he was in the Tower that morning, 'where it was reported that the earl of Essex 'had cut his throat, but he was sure he was 'murdered, and that by the order of his royal 'highness; for the said Ruddle then declared, 'That he did observe his majesty and royal 'highness part a little from those that attended 'them, and discoursed (to the best of these in'formants remembrance); the said Ruddle 'declared it was in French, concerning the 'prisoners then in the Tower, and his highness 'declared, That of all the prisoners then there, 'the earl of Essex ought to be taken off; but 'his majesty said he was resolved to spare him 'for what his father had suffered; upon which 'his highness seemed very dissatisfied; and a 'little before the death of the said earl, his 'highness parted a little way from his majes'ty, and then two men were sent into the earl's 'lodgings to murder him.' So far before their lordships.

Note, This Ruddle then declared that he had lived many years in France, and very well understood French, and could speak French very well.

The said Ruddle declared this with great earnestness and passion, and protested he thought no man safe who was against the popish interest, if once they began thus barefaced to cut throats. And he protested his blood did so boil against his royal highness, that if he could have got a party that would have stood by him, he would have shot his highness dead upon the spot, for so barefaced a murder had scarce ever been committed under a civil government.

John Bampton and his wife both declare, and in substance before the Lords have deposed, 'That about one of the clock, the very 'day the late earl of Essex died in the Tower, 'one Robert Meake that morning (a soldier in 'the Tower) came to these informants' house, 'and these informants desired the said Meake 'to give them the best account he could how 'the earl of Essex cut his own throat? to 'which the said Meake (with some earnestness 'and passion) answered, That the said earl did 'not cut his own throat, but was barbarously 'murdered by two men, sent for that purpose by 'his royal highness to the earl's lodging just 'before his death.'

What Robert Meake did further declare, and what was since his fate, you will hear in its proper order.

I do expect it will be objected, That these four are but hearsay evidence. To which I shall answer almost in the very words of another discourse on this subject, (viz.) "Seeing there is reason to believe that the stifling the first murder occasioned the addition of these two soldiers blood, (as you will hereafter have some grounds to suppose) I think such informations ought not to be slighted; for after that rate, it is but taking off such as know any thing with relation to murder, and you are very secure from any discovery, though never so many upon oath give an account of what those men (whose mouths have been by murder stopped from giving their own relation) have declared in the matter." These two soldiers related the same as to the sending the men into my lord's lodgings in two houses, as far distant as Duke's place and Baldwin's gardens; and I am verily persuaded, that neither Hughes nor Gladwin, ever before that time spoke to Bampton and his wife in their lives, for neither two remember, to have seen or heard of the other informants before my lord's death. And who could imagine that two soldiers should declare, with such concern and earnestness, that which was so very dangerous to be spoken, if their love to truth, and hatred of such a treacherous and bloody murder had not even forced it from them, to the hazard of almost their lives by such their relation?

It is true, no man ought to suffer barely upon hearsay evidence, but such testimony hath been used to corroborate what else may be sworn, and of itself may (in some cases) be enough to give satisfaction in the general, of the truth of a matter, and no farther is it here used: And I would have all men consider the many such testimonies heretofore produced, amongst which I shall only mention one which

had an immediate relation to myself. Mr. Blaithwaite, clerk of the council in 1683, at my Trial, page 1161, being sworn on the behalf of the king, against Mr. Speake and myself, in his relation of what young Edwards's sister should declare to the council board, viz. That Braddon compelled the boy to sign it, (the paper the young Edwards signed). This you find to be hearsay evidence, and the author, the sister, then in court, but testified no such thing; therefore this hearsay evidence ought, if any ought, to have been rejected: And yet this hearsay evidence, though not confirmed by the author then upon oath, was not only admitted, but ordered to be printed in the Trial in large capital letters. How much sooner ought the evidence of Bampton and his wife, as to what Meake declared; and of Hughes and Gladwin, as to Ruddle's account, be particularly remarked, seeing Meake and Ruddle we cannot now produce in court, (as that author was,) they, especially the first, being supposed to be murdered by way of prevention, by that bloody party that murdered my lord.

But the next witness for this murder, and by whom ordered, shall be from no hearsay evidence, but from a person of good estate, and reputation; for Mr. Peter Essington declareth, (and before the Lords in substance hath deposed), 'That he this informant was in the 'Tower that morning the late earl of Essex 'died; and about a quarter of an hour before 'the said earl's death was discovered, this 'informant observed his highness to part a 'little way from his majesty, and then beckon'ed to two gentlemen to come to him, who 'came accordingly; and this informant did 'observe his highness to send them towards 'the earl's lodgings; and less than a quarter 'of an hour after, this informant did observe 'these very two men to return to his highness, 'and as they came they smiled, and (to the 'best of this informant's hearing and remem'brance) said, The business is done; upon 'which, his highness seemed very well pleas'ed, and immediately thereupon his highness 'went to his majesty; soon after which, news 'was brought to the king, That the earl of 'Essex had cut his throat.'

The centinel Lloyd declared, He could not be positive whether major Hawley or the warder let the men into the outward door: But major Hawley pretends, he could not; for he (as he saith) went out of his house at five o'clock in the morning, and did not go nigh his own house till news of my lord's death was brought him by Monday the warder; and therefore he could not open the door to any that went in just before my lord's death. This reason of major Hawley is equally true with what else he saith in his defence, as appears by this information.

'*Richard Nicholson*, in the ward of Queen'hithe, corn factor, deposeth, That the day 'of the earl of Essex's death, this deponent 'was a warder in the Tower, and stood warder 'at the Inner-Tower gate that morning the earl 'died, (before the earl's death) and by major 'Hawley (then gentleman porter of the Tower) 'ordered to let no man into the Tower or out of 'the Tower. This deponent further deposeth, 'That about eight of the clock, or a little before, 'whilst this deponent was warder at the gate, 'as aforesaid, he did observe the said major 'Hawley five or six times turn up towards his 'own house, through the gate (over against 'the traitor's-gate) leading towards his own 'house; and about eight of the clock the same 'morning, this deponent was desired by a 'stranger to let him into the Tower, for which 'the said stranger gave this deponent a shil'ling: This deponent let him through the 'gate: the said major Hawley thereupon came 'to this deponent in great fury, and checked 'this deponent for letting in the said stranger 'into the Tower. This deponent further de'poseth, That major Hawley ordered this de'ponent (with several others) to go warder 'with the lord Russell to the Old Bailey; and 'as this deponent was going with the lord 'Russell to the Old Bailey, viz. about eight of 'the clock, he passed before major Hawley's 'house, and did observe major Hawley then to 'go into his own house. R. NICHOLSON.

'Jurat' 9° die Aug.
'1689, coram me,
'Tho. Pilkington, Mayor.'

That major Hawley was in the house when my lord was murdered, seems farther probable from the relation of Mary Johnson, then at work in major Hawley's house at the time of my lord's death, and what account she hath hereof given appears by these two informations.

The INFORMATION of PHILIP JOHNSON of White's Alley in Coleman-street, in London, Freemason, taken the 22d day of January, 1688-9, before John Robins, esq., a justice of the peace for the county of Middlesex.

'This informant maketh oath and saith, 'That Mary Johnson, his wife, (since deceas'ed) being a labouring woman to major Haw'ley, in whose house the late earl of Essex was 'found dead, That the morning on which he 'died, as she was at work, she heard a noise; 'and designing to go up stairs, she met major 'Hawley coming down, who told her my lord 'was dead; upon which she went up stairs, 'and found the said earl dead in his closet, as 'she gave her husband, this informant, an ac'count; and by order of the said major Haw'ley, she helped and assisted a man (to the best 'of his memory his name is major Webster) to 'strip the said earl from his cloaths; and at the 'further command of the said major Hawley, 'she washed the said earl's body, and also 'washed the said chamber and closet belonging 'to the said earl, for which the said major 'Hawley gave her 10*s*. and that the neck of

'the cravat that she took off the said earl's 'neck, was cut in three pieces.

'The ✕ Mark of PHILIP JOHNSON.'

The INFORMATION of MIRIAM TOVEY of Red-Lion-street, in White-Chapel-Parish, in Middlesex, widow, taken the day aforesaid before John Robins aforesaid.

'This informant maketh oath, and saith, 'That she several times heard Mary Johnson 'abovesaid declare the substance of the preceding information; and further sweareth, 'The said Mary Johnson told her, That major 'Webster was the person who helped her to 'strip the said earl of his cloaths; which she 'was very unwilling to do, saying, she should 'bring herself into trouble and hazard of her 'life, by intermeddling with the body before the 'coroner had sat upon it; and that major Hawley told her, she must do it, and should come 'to no trouble by it.

'MIRIAM TOVEY'

One Mr. Bunch (who formerly was a warder in the Tower) discoursing with a maid servant (who lived in the Tower, at the time of my lord's death) she said that major Hawley was the best friend she had in the world, upon account of somewhat she knew relating to my lord of Essex's death.

I have good grounds to believe, that not a few in the Tower, that morning my lord was murdered, could discover several things very material in order to a further detection; and particularly as to the coming out of the ruffians, after they had perpetrated this not to be paralleled treacherous cruelty; for I have been informed by some, who that very morning, my lord was murdered, were in Leadenhall-market, that there came a servant maid (who then lived, as she said, in the Tower) to that market the very same morning, and wringing her hands, she wept, and cried out, the earl of Essex was murdered; upon which, the people gathering about her, advised her to silence, telling her she would bring herself into trouble by such expressions; the maid thereupon declared, she was sure it was true, for she saw the men that murdered him, just as they came from his lodgings.

I have used all diligence possible to find this maid out; but neither of those I have met with could tell me her name of the person in the Tower with whom she lived. Not long after my lord's death, I was likewise informed of the name of one, who declared he saw the ruffians just as they came out of my lord's lodgings, and did observe some blood upon the cloaths of one of them; but having been obliged in a hurry often to convey away my papers, this name I have lost.

If all persons, who would discover any thing to prove my lord's murder, had been so just, as to have appeared before their lordships, and upon oath declared their knowledge relating to such discovery, I have good cause to think many more would have been examined to prove this murder. But whosoever there is that can discover any thing material with relation to this murder, and in silence stifles it, by such his silence he consents to the murder of my lord: and though our law may not reach his offence, yet he who knows it, will one day lay it to his charge; for if God requires that all governments should make diligent inquisition for blood, in defect whereof he will require the blood of the slain at the hands of such magistrates on whom this neglect is chargeable; then on those persons more especially will the greatest guilt lie, who refuse or neglect to give information to those ordained for such inquisition.

Bomeny (my lord's servant, by permission of the privy council attending his lordship at the time of his death) and Russel (the warder who swore he stood at my lord's chamber-door, when my lord died) have both before the coroner sworn, that a razor was delivered to my lord to pare his nails. And that the very same razor, was found by my lord's body, when his lordship was first found dead and locked into the closet.

But, there is good reason to believe, that no such razor was ever delivered to his lordship. And that his lordship, when first found dead, was not locked into the closet.

Those who conspired the cutting my lord's throat; and to charge his lordship with being his own murderer, did think it necessary, that some instrument, which my lord might have an occasion to use, should be laid by my lord's body, when murdered, as the pretended instrument of his death. And by Bomeny's sending to my lord's steward, for a penknife, it is probab[illegible]at penknife, had it been brought, before my[illegible]'s murder, would have been laid by the dead body, as the pretended instrument, of the suggested self-murder. But my lord being murdered, before the footman brought the penknife, therefore the razor was to be laid by the body, as the (falsely suggested) instrument of my lord's death. But had the large carving knife, wherewith you will hereafter find cause to believe they cut my lord's throat, been found by my lord's body, when, these not privy to the murder, were first to see my lord's dead body, then that very knife alone, would have proved that his lordship was murdered. For it would have been natural for the coroner and his jury, and all others, to have concluded, that my lord could have no occasion for such a knife. And from thence would have believed that those who brought that knife, did therewith cut his lordship's throat.

That this story, of the delivering the razor to my lord, a little before his death, is the forgery of those who were privy to my lord's murder, appears very plain, from the notorious contradictions as to the time of delivering this razor to my lord, in the relations of my lord's servant and warders, who do all pretend, that they saw my lord have this razor in his hand, that morning wherein his lordship died. For

Bomeny (my lord's servant) in the printed information, which appears to have been writ by Bomeny in a room, next to the coroner and jury, where several persons were ready to instruct him, swears he delivered this razor to my lord on Thursday, which was the day before my lord's death. Whereas, he had but a little before that sworn before the coroner, that he delivered this razor to my lord the very morning my lord died.

These contradictions appear, by comparing Bomeny's information, which was printed by authority, and that information which the coroner took, in his own hand, upon his first examination upon oath, and this last information the coroner upon oath delivered to the secret committee. And both these informations, are herein before printed.

But Monday the warder, who first stood at my lord's chamber-door for two hours, before Russel (that morning my lord died) came to relieve him, declared to several persons, the day of my lord's death, that as soon as major Hawley had opened my lord's chamber-door, the morning he died, he stood warder there, and it was about seven of the clock, and that he then saw my lord have this razor in his hand, two hours before Russel came up to stand at my lord's chamber-door; this is sworn before the Secret Committee by two persons.

But Russel in his information before the coroner hath sworn, that this razor was delivered by Bomeny, a little before my lord's death, and whilst he stood warder at my lord's chamber-door. These before observed contradictions between Bomeny, Monday, and Russel, as to the time of delivering this razor to my lord, plainly appear by comparing their respective accounts of delivering this razor to my lord.

Now can any man believe, that Bomeny delivered this razor to my lord the day before his death, according to the information which Bomeny himself writ, and swore to, before the coroner. And at the same time give credit to what Bomeny had just before sworn before the coroner (viz.) that this razor he delivered to my lord the very morning he died.

And can any man give credit to Monday's account of this matter, which affirms that my lord had this razor in his hand, at seven of the clock, the morning of his death. And yet give credit to Russel, who swears the razor was delivered to my lord by Bomeny a very little time before my lord's death.

These three attendants upon my lord, at the time of his death, are of equal credit, but you can't believe either of these three, as to the time of delivering this razor to my lord, without giving the lie to the two other informants, as to that matter, wherefore from those contradictions as to the time of delivering this razor to my lord, between these three attendants on my lord, at his death, there is just grounds to believe, that there was no razor at all delivered to my lord, whilst a prisoner in the Tower.

Object. If any gentleman shall say, that all those three attendants upon my lord, at the time of his death, agree in this, viz. that there was a razor delivered to my lord when prisoner in the Tower, and that their contradictions are only in the point of time, when this razor was delivered to his lordship.

Answ. It is true, they are circumstantial contradictions, in the time of delivering this razor to my lord of Essex. And the contradiction of the two elders, in their charge of adultery against Susanna, was only in point of the place, where they took Susanna in adultery. For the first of those elders swore that they took Susanna in adultery, under a mastick-tree: but the second swore, it was under a holm-tree; but both these conspiring accusers agreed in the main, viz. that they took her in adultery. Yet nevertheless, by their contradictions, as to the tree, under which they pretended to have taken her in adultery, Daniel convinced the whole court, which before had rashly condemned Susanna, that those two conspiring accusers, had falsely sworn against Susanna; and therefore those two perjured witnesses justly suffered that death, which they had conspired to have had inflicted upon her, whom they had falsely accused. And I never yet heard any person deny Daniel's wisdom and justice in this detection, or was that court ever thought unjust, which upon that detection, did punish with death those two conspiring, but perjured elders. Vide the History of Susan in the Apocrypha.

I shall now prove that those attendants upon my lord, have sworn falsely, in swearing that the closet-door was locked upon my lord, when they first saw him dead. And this will plainly appear by the many contradictions, between those three attendants, as to the person, who first opened this closet-door, after those three attendants pretended, first to have discovered my lord's death. For Bomeny first swore before the coroner, that after he had knocked at the closet-door and my lord did not thereupon speak, that he, Bomeny, did open the door and there saw my lord lying in his blood, and the razor by him. And that then he called the warder, Russel. But this very Bomeny, when he, by the instruction of his tutors writ his own information, in a room separate from the coroner and his jury, then swears, that when he, Bomeny, had knocked thrice at the closet-door, calling my lord! my lord! my lord! and his lordship not answering, he peeped through a chink of the door, and then saw blood, and part of the razor. And that thereupon he called the warder Russel, and that Russel did first open the door. But this very Bomeny, being at my trial, asked who first opened the closet-door, upon my lord's death, being first discovered by his attendants. Swears, that he knew not who opened the door. But, Russel swears before the coroner, that when Bomeny cried out, that my lord was fallen down sick; that thereupon Russel went to the closet-door, and opened it, the key being on the outside. And Russel here makes no difficulty in opening the door. But Monday, my

lord's other warder, the very day of my lord's death, declared to two of his acquaintance, as they have sworn before the Secret Committee, that my lord's body lay so very close, and strong against the door, that neither Bomeny or Russel could open the door, but that he being much stronger than either of them, put his shoulders against the door and then pushing with all his might, he broke it open.

If you mind those last observed contradictions, between those three attendants upon my lord, as to the first opening the closet-door, after my lord was dead. You will find it first sworn by Bomeny, that he opened the closet-door, but he soon after swore, that Russel first opened it. And Russel swears that he opened it, the key being upon the outside, and mentions no difficulty in opening the door from my lord's body being, as pretended by Monday, against it. But Monday affirmed that the body lay so strong against the door, that neither Bomeny nor Russel could open the door. But, that he, by pushing with all his might, broke it open. These contradictions, between those three attendants, as to the first opening the closet-door, plainly prove that the closet-door was not locked upon my lord's body when he was first found dead by those attendants. But, as a further argument that the closet-door was not locked upon my lord's body,

William Turner and *Samuel Peck*, have both sworn before the Secret Committee, that they were servants to my lord of Essex, at the time of his death, and that they had brought some provisions to my lord's lodgings in the Tower, a little before my lord's death was first discovered to those out of the house. And that they were some of the first who entered my lord's chamber after my lord's death was discovered to those out of the house, and that my lord's body lay in the closet, but most part of his legs out of the closet, as the body is represented in the cut before this book annexed.

And Monday, Russel and Bomeny then declared, that was the very posture in which they first saw my lord dead, and that no person whatsoever had moved or touched the body after my lord's death was first, by those attendants, discovered. And Turner and Peck have farther sworn, that they then observed the print of a bloody foot upon my lord's stocking, and by the print of that bloody foot, it appeared to be made by one who must be coming out of the closet after my lord was dead. And that must be one of the ruffians who murdered him.

I shall now briefly sum up that evidence, which proves that the razor was not locked into the closet with my lord's body, when his lordship was first found dead, as these before mentioned three attendants, upon my lord in the Tower, have sworn. For,

William Edwards and *Jane Loadman* (two children of thirteen years of age, at the time of my lord's death) have sworn before the Secret Committee, when they were eighteen years of age, That they saw a bloody razor thrown out of my lord's chamber-window, before my lord's death was discovered to those out of the house. And several of the relations of those two children have sworn, that as soon as those children returned from the Tower, that very morning my lord died, they gave that account to them. And that these parents were altogether then strangers to each other, the boy living in Mark Lane, west of the Tower, and the girl at St. Catherines, which is east from the Tower, and about half a mile distant from where the boy lived.

And this relation of the boy and girl, as to the throwing the razor out of the chamber, could then have in that account, no design of proving my lord's murder. For it was not publicly known, that my lord's servant and warders, would that next day swear before the coroner, that the razor was locked into the closet, when they first found my lord dead.

And William Edwards did farther depose before the Secret Committee, that he would have sworn this at my trial, had not major Hawley, at whose house my lord died, frighted him into a denial, for this Edwards swears, that the said major Hawley, meeting him, as he was going into Westminster-Hall, to be an evidence at my trial, in a very threatening manner told this Edwards (then being about thirteen years of age) that if he the said Hawley, had the management of him, the said Edwards, he should be whipped once a fortnight for seven years, which threatening of the major, did so terrify that informant (then but 13) that he was afraid to speak the truth at my trial, lest he should be severely punished for so doing. But as a further evidence of the throwing this razor out of my lord's chamber window, before it was publicly known out of the house, that my lord was dead. It is positively sworn by Mr. Samuel Story, that major Webster (one of the supposed ruffians) did confess to him, that he threw that razor out of my lord's window. And when Mr. Story asked Webster what made him to throw that razor out of the window? Webster replied, that when he did it, he was under such a consternation, that he knew not what he did.

And Lloyd, who stood centinel at my lord's lodging, where my lord died, confessed, that he did let in that very major Webster into major Hawley's house, where my lord lodged, a little before my lord's death. And that some short time after that, he saw the bloody razor thrown out of my lord's chamber-window, before his death was known to any out of that house. Most men are to seek for a reason, that should induce any of those supposed assassins to throw the razor out of my lord's chamber-window, before his death was discovered to any out of that house?

Answ. If we consider the fear and amazement which might naturally seize those ruffians, upon the least interruption, in perfecting that scene, wherein they did intend my lord's body should be first exposed to view, to those not privy to the murder, we must not expect

that what is done, under such a sudden confusion, should always be acted according to the best policy. And you find that major Webster did confess, that when he threw that razor out of the window, he was under such a confusion, that he knew not what he did. Now that great confusion might be occasioned by some one's coming up stairs, to my lord's chamber, before the murderers had laid every thing in that posture, wherein innocent spectators were first to see my lord's body. And Webster, then having the bloody razor in his hand, in the chamber, which razor was intended to be laid in the closet by the body, as the pretended instrument of his death, upon the coming up of one, who was not then privy to the murder, was afraid, that some person might be coming to my lord, and sent by proper authority, and that he should be found in my lord's chamber, with this bloody razor in his hand: being thereupon under a fear of a discovery, Webster threw the bloody razor out of the chamber-window. But that dreadful fear was soon over, when the confederate villains found, that the person coming up stairs, was only the servant maid of the house, who afterwards carried up the razor, and was soon prevailed upon by her master, to be silent. And then that razor was laid by the body, in the closet, as the pretended instrument of my lord's death. As to what is mentioned, in the latter part of the next preceding paragraph, I did receive a very credible information therein[illegible] after my lord's murder.

That the above mentioned major Webster was one of the murderers, farther appear probable, from what is sworn of his producing my lord's bloody pocket handkerchief the very day my lord died, and that handkerchief was known by the *E*, and coronet upon it, and Webster then rejoicing shook it, and said, 'Here is the 'blood of a traitor, and I do hope to see many 'more such rogues go the same way.' And the very next day (the same informant swears) that major Webster produced a knit purse, out of which he told forty-nine guineas and a pistol. Whereas, it is proved that before that time, the said Webster was very poor, and in hourly danger of being imprisoned for debts.

Had the coroner's jury narrowly observed all parts of my lord's body, from their observations thereupon, they might have been convinced, that my lord was murdered. But when the jury had been shewn the large cut in the throat, which was uncovered by the sheet, which covered all other parts of the body, they were immediately adjourned from my lord's chamber, to a public-house in the Tower. But had the jury but uncovered the body, and observed the five cuts in my lord's right hand, that alone would have convinced them that my lord was murdered, and that those five cuts in his lordship's right hand, were made, upon his lordship's endeavouring to put off that instrument of death, wherewith his murderers cut his throat. For it is positively sworn before the Secret Committee, that there were five cuts upon my lord's right hand, (viz.) one almost on the top of his fore finger, and another upon the same finger, and near the hand, and a third cut upon the fourth finger, and another cut upon his little finger of the same hand. And a fifth cut, very large, about two inches long, in the palm of my lord's right hand. But none of the coroner's jury, who were examined before the Secret Committee, would declare that they had viewed my lord's right hand. And that they might not make such observations upon a strict view of all my lord's body as were proper, and were necessary to be made, after a slight view of the cut in the throat, they were hurried away to a public-house, where one of the most sensible men of the jury, told Bomeny, that he was informed, his lord was a very good man; whereupon Bomeny declared, that his lord was as good a man as lived. Then this juryman said, that it was strange, so good a man should be guilty of the greatest sin, for, said the juryman, no action can be worse than self murder.

Whereupon major Hawley told that juryman, That whosoever thought, that self-murder was unlike my lord's principles, was not well acquainted with his lordship's principles, for many gentlemen, who were intimately acquainted with his lordship, knew that his lordship had often declared that any man might cut his own throat, or otherwise destroy himself, to avoid an infamous death. And therefore this self-murder was according to his lordship's avowed principles. This was sworn by that very juryman before the Secret Committee, and that this declaration of major Hawley did the more easily incline that juryman to believe, that my lord himself had really cut his own throat. But when major Hawley was asked, by their lordships of the Committee, by whom was he ever informed that my lord of Essex had ever justified a self-murder? The major did thereupon solemnly declare, that, before my lord's inquisition he did never hear that my lord of Essex had ever been of such a principle, as to justify self murder; and the major did further declare to their lordships, that he was not near the jury at the public-house, where they did consider of this inquisition. It is well known that it was industriously reported about town, soon after my lord's death, that my lord of Essex had often justified self-murder, as a lawful act, to avoid an infamous execution. But major Hawley's denying, before the Committee, that he did ever suggest to the jury, that my lord had justified self-murder, and that before that jury sat he did never hear it reported to be my lord's principle——

This denial of the major plainly proves, that he was conscious to himself, this pretended principle was a false charge against his lordship. But seeing this suggestion of the major to the jury is positively sworn against him, by the jury (to whom the major was very well known) it plainly proves that this suggestion was a false and malicious invented story, and

forged by the party who murdered my lord. And that major Hawley was pre-instructed by the confederating murderers, to corrupt the jury with this suggestion, so that they might the more easily be inclined to believe that my lord did indeed cut his own throat. And whereas, major Hawley did solemnly declare before the Committee, that he was not with the jury at the public-house, where they considered of this inquisition. This denial is proved before the Committee, by several of the jury, to be false: for the major had given the coroner's jury repeated occasions to remember that the major was very industrious, at that public house, to hurry the jury in finishing their inquisition. For some of that jury, at that public house, desired the coroner that they might not then finish this inquisition, but that they might be adjourned, and notice given to my lord's family of that adjournment, so that if any of my lord's relations or friends, would prove any thing on my lord's behalf, in contradiction to the pretended self-murder, such evidence might by the jury be heard, before they did agree upon any inquisition. But major Hawley then prevents the adjournment, by telling the coroner and the jury they could not adjourn, but must immediately finish their enquiry; because the king (then sitting in council) had sent for their inquisition, and his majesty had declared he would not rise from the council board, until their inquisition was brought to him. This false suggestion, from Hawley, caused the jury to make more haste than good speed, and so without any further consideration, they agreed upon their inquisition. But major Hawley being asked by the Secret Committee, who was the man, that pretended to come express from the king upon this occasion? The major declared to their lordships, that he never knew of such an express from the king, and that he did not suggest this to the coroner's jury, nor was he ever with them, at that public-house where they finished that inquiry. But several of the jury, before the Secret Committee, did positively swear all that is before alledged, to be by the major suggested to the jury. Had the coroner discharged his duty, in taking this inquisition, he would have caused Bomeny, (my lord's servant) Monday and Russel, his two warders, to be kept apart, (at the time of their examination), so that neither might hear, or know what questions were asked the other examinants. And if upon such separate examinations, Bomeny, Russel, and Monday had point blank contradicted each other, according to what is herein before observed, to have been by those three attendants, sworn or declared, in relation to the time of delivering the razor to my lord, and as to the person (of those three attendants) who first opened the closet-door upon my lord's body, I believe the coroner's jury, had they been of common sense and honesty, would have believed that neither of those examinants did ingenuously discover what he knew, relating to my lord's death, but that they were all three pre-engaged, falsely to swear what might influence the coroner and his jury to believe that my lord himself cut his own throat. For should Bomeney (upon his first examination) have sworn, before the coroner, that he delivered the razor to my lord the day before his death, and upon a second examination before the coroner as to that matter, should have positively sworn, that he did not deliver the razor to my lord until about half an hour before his lordship's death was discovered. And should Monday have sworn, before the coroner and jury, that he saw my lord have this razor in his hand, and therewith scraping his nails, at seven of the clock in the morning, as soon as my lord's chamber-door was opened, and two hours before Russel stood warder at my lord's chamber-door. And should Russel have sworn, that he saw this razor delivered to my lord by Bomeny, after Monday had left his station at my lord's chamber-door, and not half an hour before his death. The coroner and jury must, upon those contradictions, have believed, the story of the delivery of a razor to my lord, a little before his death, to be an entire forgery, and, wherein those three attendants, were pre-instructed by some of those confederating murderers, who had been the principal contrivers of this barbarous murder.

And (as to the first opening the closet-door upon my lord's body) should Bomeny first have sworn before the coroner, that my lord, not speak[illegible] he had three times knocked at the c[illegible] that he then first opened the door, an[illegible] saw his lordship lying in his blood; and the razor by him. But upon a second examination by the coroner, should Bomeny have sworn, that he upon knocking thrice at my lord's closet-door, my lord not answering, that he only peeped through the chink of the door, and then seeing my lord on the ground, and the razor by him, he called Russel (then at my lord's chamber-door) who thereupon came, and first opened the closet-door. And should Russel have sworn, that he first opened the closet-door, and without any difficulty, the key being upon the outside of the closet-door. But had Monday been sworn before the coroner, he would have deposed, that neither Bomeny or Russel, were strong enough to push the door open, because my lord's body lay close and weighty against the door; and that he himself did put his shoulders against the door, and thrusting with all his strength, he thereby removed the body, and so opened the door. These beforementioned contradictions, between those three attendants as to the delivery of the razor and opening the closet-door, would have convinced the jury, that the closet-door was not locked upon the body, as two of those three attendants had sworn before the coroner, and as the third (that very morning my lord died) had declared to several of his friends, who have sworn it. And from these forged and false accounts, as to the delivering the razor, and opening

the closet-door, the jury would have concluded, that those three attendants had resolved to conceal what was really true, and most necessary to be known, relating to my lord's death. For no man ever swore a premeditated lie, but to conceal a material truth.

And seeing those three attendants, by their contradictory and false informations, had refused to discover such truths relating to my lord's death, as they themselves were privy to, and which would have plainly proved how my lord was barbarously murdered. The jury, from hence, ought in justice to have concluded, that those two forsworn warders and servant, were at least consenting to, if not the real actors of that perfidious and barbarous murder; which treacherous cruelty it was their duty (as my lord's warders and servant) to have prevented.

But alas! such separate examinations, of these three attendants, could not be expected from such a deputy-coroner, who in taking this inquisition, was himself under the direction of those in the next room to the jury, who had assisted Bomeny in the forging his second information. For when some of the jury insisted to have all the clothes produced, in which my lord was found dead, the coroner was hastily called into that next room, and soon returning, he (in a passionate manner) told the jury, it was my lord's body, and not his clothes, they were to sit upon. That they had seen the body, and that was sufficient.

This was sworn (before the Secret Committee) by several of the coroner's jury.

King Charles the second, with the then duke of York, was then in the Tower, when my lord died, and when informed thereof, (which was a few minutes after his lordship's death was first discovered to those out of the house) his majesty appeared to be very sorry for the same, and immediately sent my lord Allington, then governor of the Tower, sir C—— M., and Thomas Howard, esq. to my lord's lodgings, and his majesty commanded those three gentlemen, that they should take immediate care, that all attending upon my lord might be secured, and by them strictly examined, in relation to my lord's death. And those three gentlemen should (as from his majesty,) order that my lord's body should remain in that posture wherein it was first found, until the coroner's jury had sat upon the body. Soon after those three gentlemen had entered my lord's chamber, and ordered his lordship's attendants, at the time of his death, to be secured, sir C—— M., (as a justice of the peace) began the examination of one of those attendants, but as soon as he began that examination, a gentleman came, pretending to be sent by the king, to command sir C—— M., (as from his majesty) to go to the Old Bailey (where my lord Russell was then trying) and inform the Attorney-General, then chief counsel against my lord Russell, of my lord's death, and to know of the Attorney-General, what was fit to be ordered, in relation thereunto. But sir C—— M., by the same gentleman, [illegible] his majesty's leave, that he might take the examinations of all my lord's attendants at the time of his death, pursuant to his majesty's first command. But the same gentleman soon came again the second time, as from the king, to tell sir Christopher, that it was his majesty's express command, that he should immediately go to the Old Bailey. In obedience to this repeated command, sir C—— M. immediately went to the Old Bailey. But when the Secret Committee asked sir C—— M. who that gentleman was, that so came with repeated orders, as from the king, for sir Christopher's going to the Old Bailey, to inform the court (then trying my lord Russell) of my lord of Essex's death. For the lords of the Secret Committee told sir C. that they did believe, that the gentleman used his majesty's authority, without his majesty's privity. But sir C—— M. did depose that he could not recollect, who that gentleman was, which gave those repeated orders, as from his majesty. It was a great misfortune, that sir C. could not remember, who this messenger was; for could that have been known, it might probably have been discovered, that this messenger was sent by the then duke of York, who too often in those days used the king's authority, without his majesty's privity, and against the true interest, of both king and kingdom. But contrary to what was thus ordered by his majesty, as to continuing of my lord's body, in the very posture, wherein it was first found, my lord's body was stript the very day of his death, and all his clothes then carried away, and the room and closet washed. And all this done by the command of major Hawley, who was justly suspected as highly criminal in relation to my lord's death, as appears by several of those examinations, herein before mentioned. The day before the convention met, he was confined to his own house, by order of the lord Lucas, then governor of the Tower, as soon as the lord Lucas had received those before-mentioned informations, which relate to major Hawley. As soon as the coroner had taken this inquisition, he carried the same, with those before-mentioned informations by him taken, to Whitehall, to the secretary of state, in order to their being immediately printed. But when by the secretary or some in authority, under him, it was found that Bomeny my lord's servant had sworn, that he delivered the razor to my lord on Thursday the day before his death, and Russel had sworn it was not delivered until Friday, and not half an hour before his death. These contradictions (by some at Whitehall) were not thought convenient to be exposed in print, as they were sworn, lest they should give just ground of suspicion that the whole story [of the delivery of a razor to my lord] was forged, and therefore a reconciler was ordered to amend Bomeny's information, so that it might be agreeable to Russel's information. And thereupon this reconciler, to what Bomeny had sworn, added (on Friday the

13th instant) but this forged addition was made without the least congruity to sense or grammar. For it is apparent, that the foregoing part of Bomeny's information relates wholly to Thursday, but at last, without any regard to what Bomeny had before sworn [on Friday the 13th instant] is forged and foisted in contrary to all rules of grammar, and common measures of sense.

I shall now give a more particular account of what arbitrary measures were taken to prevent a discovery of this murder. How several of the soldiers who were in the Tower, that morning my lord died, having made such discoveries as satisfied them my lord was treacherously murdered. Those soldiers had, that very day used too great a freedom, in their discourse with relation thereunto. And therefore (Meak declared to two who have sworn it) that the next morning after my lord's death, a colonel in the Tower, called several soldiers together, and, under severe threatenings, enjoined them not to speak one word of what they had seen or heard, relating to my lord's death. Wherefore the said Robert Meak desired those persons (to whom he had, the very day of my lord's death, freely discoursed concerning my lord's being murdered) not to divulge what he had told them relating to my lord's death, for (said Meak) should that be known, it would prove my ruin. But some short time after that, this very Robert Meak declared [to three persons, who have sworn it] that he did believe, he should be privately murdered, for what he knew and had declared relating to my lord's death; and, the very day he was murdered, he desired one Bampton and Davison to keep him company the remaining part of the day; for I fear that this day I shall otherwise be murdered, for (said Meak) I have this day observed that I am dog'd, by some strange and suspicious persons. But Bampton and Davison refused to keep Meak company, lest they themselves should thereby indanger their own lives. And the very next morning this Meak was found dead in the Tower-ditch, and just over against major Webster's ale-house, which stood near Tower-ditch.

As for Ruddle the soldier, (who the day of my lord's death, had so freely discovered what he knew relating to my lord's murder) I was informed, that this Ruddle was, with some other soldiers, sent to the East-Indies, soon after my lord's death; and, at Fort St. George, shot to death; but I could not learn, for what cause he was so punished.

There was one Mr. Hawley, a warder in the Tower that very morning my lord was murdered, and by what he had observed in relation thereunto, he had reason to declare to a friend, that my lord's death was a piece of villainy throughout.

This Mr. Hawley, being in Westminster-hall, whilst I was trying at the King's-bench-bar, he said, That he wondered what made me stir, in relation to my lord of Essex's death, when, to his knowledge, I knew nothing of that matter. Whereupon one Mr. Broom, then the city coroner, said, Mr. Hawley, if you know that Mr. Braddon knows nothing, in relation thereunto, what must you know of that matter? Whereunto Mr. Hawley made no reply. But Mr. Hawley's knowledge therein cost him dear; for about March next after my lord's death, Mr. Hawley was missing, whereupon one of the warders, who was supposed to be a papist, said, that Mr. Hawley had been prating about the earl of Essex's death, and for such his discourse was forced to fly. But six weeks discovered the contrary; for this Mr. Hawley was then found dead and stript, in a river near Rochester, and his murderers had so barbarously treated him, and bruised, and altered his face, from his natural form, that by his face none could know him. But his murderers had left his stockings upon his legs, and thereby his wife knew the body to be her husband's, for he wore three stockings upon one leg, and, for some indisposition in the other leg, two stockings, and a seer-cloth. After this Mr. Hawley had been missing a few days, and upon the strictest inquiry could not be heard of, his widow, in several Gazettes offered a reward of 100*l.* to any, that should discover her husband's body dead or alive. But it was near six weeks before the body was found.

It is believed some more persons were murdered, to prevent their discovering what they knew in relation to my lord's murder; for John Holland, one of the supposed assassins, declared that several persons had been made away, for blabbing what they knew relating to my lord of Essex's death.

And besides such additional murders, to prevent the discovery of my lord's murder, other arbitrary methods were practised to hinder other people from discovering what they knew relating to my lord's murder. For,

Richard Jordan deposed, that some short time after my lord's death, he saw a soldier tied to the wooden horse, in the Tower, by order of lieutenant colonel Nicholson, and whipt after a cruel and barbarous manner: and this deponent heard the said colonel Nicholson tell the soldier he ought to have been been hanged for what he had said. And this deponent being very very well acquainted with the marshal, that whipt that soldier, he did afterwards inquire of the marshal, how many stripes he gave that soldier, and the marshal said, that the said colonel Nicholson commanded him to give him fifty three stripes, and stood by all the time to see it done. Whereas the usual number of stripes given to soldiers whipt at that horse, was twelve. Whereupon this informant then asked the marshal what great offence had that poor soldier committed, that his punishment was so severe, whereupon the said marshal gave the deponent this information, (viz.) That a certain doctor of divinity standing over against the chamber, wherein my lord died, the doctor then asked that poor soldier, then standing near him, which was the chamber, where my lord of Essex cut his throat? Where-

upon the soldier pointed to my lord's chamber window, and said, That is the chamber, wherein it is said, that the earl did cut his throat. The doctor then asked the soldier what he did believe? I believe in God, replied the soldier. Upon which the doctor said, That belief of your's I do not now question; but I desire to know of you, whether you do not believe that the late earl of Essex did indeed cut his throat? and pressing the soldier for his answer thereunto, that unhappy soldier did thereupon say, Sir, I will not say I do believe it; and, thereupon the doctor informed the governor, of what was said by that soldier, who was thereupon put in prison, and, for a fortnight, fed upon bread and water, and, when the governor was out of the Tower, lieutenant colonel Nicholson ordered the barbarous whipping above-mentioned to be inflicted. And the more effectually to prevent any discourse, that might give the least credit to my lord's being murdered, the then arbitrary proceedings of those days, punished one of my lord's coroner's jury, because he declared his dissatisfaction in finding my lord *felo de se*. This juryman was one Mr. Colston, who had many years taught writing, and the mathematics, upon Tower-hill. And some time after my lord's death, this juryman was giving some persons an account of the several irregularities which had been practised, relating to my lord's body, before they of the coroner's jury had seen the body, and that juryman declared that these jurymen were not permitted to make those inquiries, which were necessary to discover the true manner of my lord's death. And then that juryman did further say, That he did believe that all of us [the coroner's jury] were infatuated to bring my lord in *felo de se*, but he did believe, that had they not been hurried into their inquisition, they should have found it otherwise; for this discourse, this honest coroner's juryman, was prosecuted, upon an information, and first was sentenced to pay a fine of 300*l*. and to be pilloried. But sir John Friend, who was executed for high treason, since the Revolution, having been this Colston's scholar, and then having a great interest at court and particularly with the then duke of York, interceded for a mitigation of the above judgment, and sir John Friend therein so far prevailed, that the pillorying the juryman was remitted, and his fine mitigated. But he lay prisoner for some time in the King's-bench prison, for that mitigated fine.

If such arbitrary practices, as those mentioned, were used, to prevent any persons declaring their belief of my lord's murder. It could not then be expected, that those then in power would give the least encouragement to a full discovery of this perfidious and barbarous murder, and therefore all reasonable proposals made to them, then in power, for a discovery of this murder, were to be rejected; and a remarkable instance hereof is what follows, (viz.)

About six weeks after my lord's death, there was a letter, unsealed, left with one Mr. Cadman, a bookseller, then living in Durham Exchange in the Strand; this letter was directed to the right honourable the countess Dowager of Essex; the substance of this letter was, that,

'If her honour could prevail with the king 'for the author's pardon, he would then make 'a full discovery, how, by whom, and, whose 'order my lord was murdered. And this 'letter did assure her honour, that the (then) 'duke of York, and my lord ——, were autho'rizing this murder.'

This letter was subscribed 'P. B.'

By the hand, wherein it was writ, and the two letters subscribed, 'Paul Bomeny,' before-mentioned, was the author of this letter; and this Bomeny did once blasphemously say, that he knew as well how my lord came by his death, as God Almighty himself.

The letter above-mentioned was fairly writ between a Roman and an Italian hand, and such Bomeny did write, when he did intend to write his best. And the two letters, P. B. are the two initial letters to Paul Bomeny's name.

Object. If it shall be objected, that this letter cannot be supposed to be writ and subscribed by Bomeny himself; for had this fellow been taken up, and the letter proved to have been writ by him, this letter alone might have convicted him, seeing therein he did (in substance) confess himself guilty of that murder,

Answ. Could this letter have been proved to be Bomeny's writing; nay, had he confessed he writ the same, he was in no danger of a prosecution from the male-administration of those days. For had those then in authority hereupon caused Bomeny to have been apprehended, they would therein have catched a tartar; for should they have proceeded against him, upon this letter, the world would then have concluded, that the whole contents thereof had been true, and consequently that the then duke of York, and my lord ——, were the principal contrivers of this barbarous murder. And then, what would the duke of York, and his creatures then the principal ministers of state, have got by such a prosecution, conviction and punishment?

Mr. *Cadman* deposed before the secret committee, that he carried that letter to a justice of peace, who did afterwards inform Mr. Cadman, that he carried it to the secretary of state. But Mr. Cadman deposed that he was not sent for, either by that secretary of state, or any other minister of state, to be examined, in relation to the receipt of that letter.

Had not the then duke of York (whose impatience for the crown would not stay, as you will hereafter find, until a disease had fairly given him the succession) been guilty, of being the principal author of my lord's murder, and had not some of that duke's chief creatures been also involved in the same guilt; no charge, nor industry would have been wanting, in the then ministry, to find out the author of that letter, in order to a full discovery of that murder, which in itself, and the consequences

thereof, was one of the most treacherous and barbarous cruelties that was ever recorded in Great Britain's annals.

I have great cause to believe, that king Charles the second was never informed of this letter, for I have many particular circumstances which strongly prove, that his then majesty was not made privy to that black contrivance of my lord's murder; for you will hereafter find that king Charles the second did intend to have had the earl of Essex's murder fully discovered, in order to which king Charles would have pardoned one, or more, of the under-actors, in order to have made a full discovery of the principal authors of that murder, though king Charles the second, out of natural affection to his brother, the then duke of York, would have removed that duke's person from the danger of suffering, what his guilt therein had justly deserved, and therefore the then king would have obliged that duke to travel, 'before king Charles had ordered a melius inquirendum' into the murder of this unfortunate lord; for his majesty did declare to the then lord Allington (not many days before his untimely death) that his majesty would make a strict inquiry into my lord's death. But of this I shall (in the close of this discourse) give a more particular account, and upon what occasion, king Charles had come to that resolution in relation to the discovery of my lord's murder.

Some short time after the secret committee of lords was appointed to inquire into my lord's death; Paul Bomeny before-mentioned, being in France, writ to sir Henry Capel, my lord Essex's brother, and did assure his honour, that would his circumstances have enabled him to be at the charge of coming into England, he would soon come to England, and do my lord's family all the service, within his power, in relation to his lordship's death. But if sir Henry Capel would remit him money to furnish him with what was necessary for such his return into England, he would (soon after such remittance) come to London, and wait upon his honour. Sir Henry Capel shewed me this letter, and then declared that he would remit to Bomeny a sum sufficient for his coming into England. But I then told sir Henry Capel, that Bomeny had lived in France, for several years, a profest papist, and might therefore be presumed to be under the direction of his priest; and I could never believe that any Romish priest would permit Bomeny, to make a full discovery of my lord's murder; seeing such a detection would be very destructive of the popish interest. But sir Henry declared he would remit the money, and run that hazard. And sir Henry did afterwards tell me that he did remit Bomeny the money accordingly. But after that remittance, sir Henry Capel never heard of either Bomeny, or money remitted. I shall now give some account of one John Holland, who, to an intimate friend, had declared that he was one of those who cut my lord of Essex's throat, and that it was done with a very large knife, and he did then inform his friend, how he came to be engaged in that service, and the relation which Holland then gave, was, in substance, as followeth (viz.)

'Holland some short time before my lord's 'death, waiting upon a certain great lord, and 'then a minister of state, and in whose family 'he had for some time been a servant, his 'lordship seemed very much discomposed. 'Whereupon Holland then told his lordship, 'that if his waiting upon his honour, had so 'discomposed him, he would immediately 'withdraw. No, said his lordship, I am not 'angry with you; but am very much con'cerned to think, that of the many servants, 'whose fortunes I have raised, there is not 'one of them, whom I can trust, or that will 'serve in such an affair, wherein I would em'ploy him, or words to that effect. Where'upon Holland declared to his lordship, that 'he would faithfully and punctually obey his 'lord's commands, in whatsoever was within 'his power to perform. Whereupon that lord 'discovered to Holland the designed death of 'the earl of Essex, and would have Holland 'to be therein principally concerned; to which 'the said Holland readily consented; and 'Holland declared that they cut the lord of 'Essex's throat, with a large knife, for that 'purpose bought. And Holland did farther 'inform his friend, that some people had 'been made away, for prating of what they 'knew, in relation to my lord's death, lest 'they should make a discovery of my lord's 'murder.

'This very Holland was afterwards the 'principal person concerned, in contriving, and 'robbing one doctor Gatford, to the value of 'some hundred of pounds. For which rob'bery the said Holland, and doctor Gatford's 'maid, and one Davis, were committed to New'gate. But whilst Holland was there a pri'soner, he was very merry, and was almost 'daily visited by that noble lord's secretary, 'who had (as before-mentioned) engaged Hol'land in my lord's murder. And notwithstand'ing Holland well knew, that the evidence 'against him for that robbery was very full, 'and that he had just cause to believe he should 'be convicted. Yet the said Holland told some 'of his most intimate acquaintance, that he was 'sure not to suffer as long as my lord —— hath 'any interest at court. And that he was far'ther assured, that he should never want mo'ney as long as that lord lived. And that his 'lordship had sent him sixteen guineas, as soon 'as he heard of his commitment to Newgate.

'Major Richardson (then keeper of New'gate) did inform the lords of the first general 'committee, appointed to inquire into my lord's 'death, that when he (the said Richardson) 'was told, by his under keeper, that such a 'lord's secretary did almost daily visit this Hol'land, and, as Holland boasted, by his lord'ship's order, and furnished him with money 'whilst Holland was prisoner for the said rob'bery: That the major told that secretary,

'that his lordship's honour was exposed, by 'appearing so much concerned for such a villain, a greater than which I never had (said 'the major) in my custody, since keeper of this 'place. But that secretary then pretended, 'that his lord was much concerned for Holland, because the said Holland had for some 'time waited upon his lordship's eldest son. 'Upon the trial of Holland, Davis, and the 'servant maid, for this robbery, by the evidence 'it appeared that Holland had debauched the 'maid, and afterwards prevailed with her to 'consent to the robbing of her master, of all the 'doctor's plate and money (then in the house) 'and what else was easily portable and valuable. And that this Holland did also prevail 'with the said Davis (who was a gentleman's 'son) to be concerned in the robbery. Upon 'the trial, all those three, (viz.) Holland, Davis, and the maid servant were convicted. 'And, notwithstanding, upon that trial, it 'plainly appeared, that this Holland was the 'principal contriver of that robbery, and that 'his other two accomplices, were by Holland prevailed upon to be his coadjutors in that 'robbery; yet this principal author, and actor 'therein, was pardoned, and his two under-'strappers were executed, for the same.

'And when doctor Gatford found, that Hol-'land's great interest at Whitehall had pro-'cured his pardon, the doctor then (in an after 'sessions) moved the court, at the Old Bailey, 'that he might charge the said Holland with 'an action, for what he had robbed him. 'Which being granted, Holland was accord-'ingly charged with an action of some hun-'dreds of pounds, at the said doctor's suit. 'Whereupon Holland removed himself to the 'King's-Bench prison; from whence (in term 'time) he had liberty to go abroad with a 'waiter, and one John Waytis, (then a waiter, 'belonging to the King's-Bench prison) did ge-'nerally attend upon Holland, when he went 'abroad upon his rule. And that very John 'Waytis hath sworn, that, he did often go with 'Holland to my lord ——, and as soon as Hol-'land sent his name to his lordship, he was im-'mediately admitted; and, upon coming from 'his lordship, he did (several times) show the 'said Waytis, many guineas, which the said 'Holland pretended his lordship had given 'him. Whereupon the said Waytis asked 'Holland, how that lord came to be so kind to 'him? whereupon the said Holland answered, '(with his usual phrase) Damn him, I have 'done that for his lordship, that he durst not 'do otherwise.

'And the said Waytis did farther depose, 'that one day telling the said Holland, that it 'was whispered about, that the earl of Essex 'was murdered, the said Hollond then said, 'Damn him, it was not a farthing matter, if 'twenty such, were so taken off.'

He that thought twenty such as my lord ought so to be taken off, would not much boggle at the being concerned in the murdering of one.

This Holland was afterwards concerned with another, in the murdering an officer of the Compter, of London, for which murder, Holland and his accomplice fled beyond seas. And thereupon they were both prosecuted to an outlawry for that murder. But whether this Holland be now living I cannot tell.

I shall now contract the material proofs before mentioned, to prove that this great patriot was barbarously murdered. But I shall first give a brief relation, of what was sworn before the coroner by one of my lord's warders and servant, to prove the (pretended) self-murder. And the substance of their evidence declares, that a razor was delivered to my lord to pare his nails, that with that razor he retired into his closet, and locked his closet door, and less than half an hour after that, the door was opened, and my lord's body there found, with his throat cut, and that razor lying by the body. But if it appear, that what was thus sworn, to prove my lord *felo-de-se*, is an intire forgery throughout, that alone will be sufficient to prove this barbarous murder: For

No man ever swore a premeditated lie, when a truth would serve his turn. And

No man ever swore a premeditated lie, but to conceal some material truth. If therefore what was as before sworn, to prove the pretended self-murder, be a premeditated lie throughout, that lie was then sworn to conceal those material truths, which, if discovered, would have proved this barbarous murder.

That those warders and servant, who would have proved my lord *felo-de-se*, have, for that purpose, sworn what is false, in every material part of their evidence, doth plainly appear from this one consideration or maxim relating to proofs, viz.

When two or more, who pretend to be co-witnesses to a fact, shall contradict one another, in some material circumstances, relating to that fact, those contradictions strongly conclude, that they have sworn falsely.

Now my lord's two warders and servant have materially contradicted each other, in their proofs, for the (pretended) self-murder: This plainly appears by comparing what they have sworn, or declared in relation thereunto. For

Bomeny first swore, that he delivered to my lord this razor about eight of the clock in the morning my lord died; but within an hour after that, Bomeny in his second information swears, that he delivered this razor to my lord on Thursday, being the day before his lord's death. And

Monday, one of my lord's wardens, on the day my lord died, declared to some of his acquaintance, who have sworn it, that he, first standing warder at my lord's chamber door, the morning on which he died, saw my lord have this razor in his hand, and therewith scraping his nails, as soon as my lord's chamber-door was opened, and two hours before Russel, that morning, stood warder at my lord's chamber-door. But

Russel hath sworn that he standing warder

at my lord's chamber-door after Monday went down stairs, saw Bomeny deliver this razor to my lord, not half an hour before they found my lord dead in the closet.

Those contradictions (relating to the delivery of this razor to my lord) strongly prove, that no such razor was delivered to my lord, whilst a prisoner in the Tower.

I shall in the next place observe the contradictions of those witnesses for the pretended self-murder; as to the first opening the closet door, after my lord's death: For,

Bomeny first swore, that about half an hour after he delivered to my lord this razor, he came up to my lord's chamber, and my lord being in the closet, Bomeny knocked at the closet-door, calling several times my lord! my lord! but he not answering. Bomeny thereupon pushed the door a little open, and then saw his lord lying all at length on the ground in his blood, and the razor near him on the ground. But,

Bomeny in his second information, which (with the assistance of his tutors) he writ in the room, next to the coroner's jury, swears, that after he had several times knocked at the closet-door, and my lord not answering, he took up the hangings, and looking through the chink, he saw blood, and part of the razor. Whereupon he called the warder Russel, who did then first push the door open.—But

Monday declared (the day my lord died, before two of his friends, who have sworn it) that my lord's body lay so close to, and heavy against the closet door, that neither Bomeny nor Russel could open the closet-door, but that he being much stronger than either of them, did put his shoulders against the door, and thrusting with all his strength, he removed the body, and pushed the door open.—Whereas

Russel hath sworn, that he first opened the closet-door, the key being on the outside, and mentions no difficulty therein, from my lord's body then lying against the door, as Monday pretends.—

These contradictions, between these three witnesses, as to the first opening the closet-door, after my lord's death, do conclude that the closet-door was not locked, when those witnesses first saw my lord dead in the closet. —But as a farther proof, that this closet-door neither was, or could be locked upon my lord's body,

Two witnesses have deposed, that upon the first discovery of my lord's death by his warders, to those not privy thereunto, they ran up stairs into my lord's chamber, and then saw my lord's body lying in the closet, but his legs without the closet, and that Bomeny, Monday and Russel then declared, That was the very posture wherein they first found my lord dead.

And whereas it was sworn before the coroner, by Bomeny and Russel, that the razor was lying in the closet by the body, when my lord's death was by them first discovered—I shall now disprove that part of their evidence, and shew, that this razor was laid by the body in the closet, as the pretended instrument of his death, after my lord's assassinates had murdered his lordship, with a large knife, much fitter for that villainous purpose, than this razor could be.—For

Two witnesses have sworn, That they saw a bloody razor thrown out of my lord's chamber window, [which is 16 foot distant from my lord's closet] before it was discovered to any out of that house, that my lord was dead. And that the maid, when she carried that razor up stairs, into my lord's chamber, then cried out murder! murder! several times, and thereby first discovered my lord's death, to those out of the house. And six witnesses have sworn, that those two informants, related this matter of the razor's being so thrown out of the window, as soon as they, that day, returned, to their respective habitations. And the centinel, who stood at my lord's lodging, confest that he saw the bloody razor thrown out. And Webster (one of the supposed ruffians) confest that he himself threw it out. And several other soldiers (then in the Tower) have sworn, that, in the morning of my lord's death, it was genernerally discoursed in the Tower, that a razor was thrown out of my lord's chamber window, and carried into the house by the maid, who took it up.—And there were several great knotches in the razor; and particularly one very large knotch at the point of the razor; which knotches were occasioned by the razors falling upon some stones, when thrown out of the window. So that after the maid carried up the razor to my lord's chamber, some of the confederating murderers laid that razor in the closet by the body, and it was then to be given out, that with this razor my lord cut his own throat.

I hope every impartial and judicious reader will find, that I have disproved every material part of what was sworn by Bomeny and Russel, before the coroner, to prove the pretended self-murder, (viz.) 'That there was a razor 'delivered to my lord to pare his nails, that 'with that razor he retired into his close-stool 'closet, and there locked himself in. That, 'upon opening that closet-door, my lord's 'body was there found, with his throat cut, 'and that razor lying by the body.'

If therefore those two perjured informants, before the coroner, have sworn falsly, to charge my lord with the self-murder, it was sworn by them to protect themselves, and their murdering confederates, from justice: for having been hired, by the duke's agents, barbarously to murder, first the person, and then the honour, of that great, but unfortunate lord. For,

Floyd, the centinel at my lord's lodgings, being taken up, 1688, as suspected to be privy to my lord's murder, did then confess to a gentleman and afterwards to the justice, and after that to the Secret Committee of Lords, and last of all, whilst a prisoner in Newgate, he confest to an intimate acquaintence, one Tempest, a butcher, that by order of major Hawley, or

one of my lord's warders, he let two or three men, into my lord's lodgings, a little before my lord's death, and that major Webster was one of those men; and that they went up stairs, into my lord's chamber, and immediately thereupon, this Floyd heard a great trampling, in my lord's chamber, and some noise like the fall of a man's body. And that, some time after this, it was declared, by my lord's warders, that, my lord of Essex had cut his throat with a razor. But this very centinel did declare to the above friend of his, that his said confession did trouble his conscience, for though it was all true, yet he should not have confest it.—This trouble in conscience, of this centinel, might probably be occasioned, by some villainous oath of secrecy, and entered into by the confederating murderers, (and such as the Gunpowder traitors had taken) not to discover any thing relating to that murder. And

Whilst these three assassinates (as above let in by the soldier) were struggling with his lordship, one Martha Batscomb was then standing near, and over against my lord's chamber window, and then saw and heard in my lord's chamber, four men struggling together, and heard one of those four cry out, very dolefully, murder! murder! murder! And this last informant did depose, that she did not go out of sight of my lord's chamber window, before it was given out, by my lord's warders, that my lord of Essex had cut his throat. And this last deponent did farther swear, that the day of my lord's death, or the day next after that, she did inform one Mr. Perkins of what what she had (as before related) seen and heard in the Tower, and the said Mr. Perkins then advised her to be therein silent; lest those, who had murdered my lord, might also murder her, to prevent the discovery of my lord's murder, and the said Mr Perkins, before the Secret Committee, did depose, that the said Batscomb did give him such a relation as she hath as above sworn, and that this informant did then advise her, not to discourse such her knowledge, relating to my lord's death, as long as the Papist interest was so prevalent at court, as it did then appear to be.

And by the following information it will appear, that by some of the then duke of York's agents, those three assassinates were hired to murder his lordship. For

It is sworn, by one Dorothy Smith, that ten days before my lord's death, several papists met at one Holmes's house in Baldwin's gardens, with whom the said informant was then a servant, and then and there were overheard by this informant to declare, That the earl of Essex knew so much of their designs, and was so very averse to their interest; that he must therefore be taken off. And those papists did then and there farther declare that they had been with his highness (the then duke of York) and that his highness had ordered the earl of Essex's throat should be cut, and his highness had promised to be there, when it was to be done. And this informant about six days before my lord's death, overheard at her said master's house, some of those very papists declare, that it was resolved the earl's throat should be cut, but it should be given out, that my lord did it himself, and if any should assert the contrary, he should be taken up and punished for it. And she did farther depose that the day my lord died, some of those very papists, met the third time at her said master's house, and then and there declared to her said master, that they had that morning cut the said earl's throat, and that they could not but laugh to think, how like a fool the earl of Essex looked, when they came to cut his throat. And this deponent did farther declare, that soon after the said earl's death, she told one Mr. Billinger (with whom she had before lived as a servant) that she was mightily troubled to think, that my lord of Essex should be falsely charged with murdering himself, when she had (as above related) heard the papists declare how, and by whom, the said murder was contrived, and afterwards with great joy confessed by some of those very ruffians, who did it. But the said Mr. Billinger, then advised this informant, not to discover what she had as before overheard, least her talking thereof might occasion her own death. But this deponent farther declared, that she was very much troubled that she could not with safety discover this matter to some magistrate. But several persons in whom this deponent did put great confidence, and to whom, in king James's reign, she discovered what is above by her declared, did all of them advised this informant not to speak of it, whilst the popish interest governed us, for such her discourse would be her ruin. Seven witnesses have deposed, that in king Charles the Second's, or king James the Second's reign, the said informant, did, in substance, relate to them, what, as above was by her heard at Holmes's house, relating to my lord's murder, and that they did advise the said deponent, not to talk thereof, lest she might thereby both ruin herself, and some others to whom she might make such a discovery.

And whereas the said Dorothy Smith, did depose that she lived a servant with the said Mr. Holmes, some time before, and continued there, till after my lord's death. To invalidate this evidence, one Dorothy Hewit, a violent papist and sister-in-law to the said Holmes, did depose that the said Dorothy Smith, in April before my lord's death, was turned out of that service, for a supposed theft. And one Elizabeth Gladman, (who appeared to be of a loose character) did depose, that she, in April next before my lord's death, came a servant to the said Mr. Holmes, and continued in that service, for some time after my lord's death. But in contradiction to those two informations of Hewit and Gladman; eight witnesses have deposed (on behalf of Dorothy Smith) that the said Dorothy Smith was a servant with the said Holmes long after April, 1683, and continued in that service about the earl of Essex's

death, and some of those have deposed, that the said Dorothy Smith continued in that service, till some time after the earl of Essex's death. And whereas the said Dorothy Smith did depose, that the day of my lord's death, her said master was at his own house, and then and there was informed by one of the assassinates, that they had, that very morning, cut my lord's throat; to invalidate that part of the said Smith's evidence, the said Dorothy Hewit, the papist, did depose, that, the week before my lord's death, she went into the country, with the said Holmes, and staid with him in Warwickshire, till the 29th of July, 1683. But in contradiction to Hewit, a taylor hath deposed before the secret committee, that in July, 1683, he lived very near to the said Mrs. Hewit, and that the very week my lord died, he carried to the said Mrs. Hewit, a dust gown, which he then made for her, and then tried it on, at her house, and the said Dorothy Hewit then (the very week my lord died) told this deponent, that she with her brother Holmes was shortly to go into the country. But how long after my lord's death, the said Hewit continued in the town, before she took the journey, the said informant could not tell. And this informant did then produce before the secret committee, his day book, wherein it did appear, that the dust-gown was delivered to the said Hewit about the end of that week my lord died. And that informant did depose that entry was true. And the said Holmes's wife, and the said Dorothy Hewit, her sister, having heard that this taylor had given such information, as aforesaid, they thereupon went to the said taylor's house, and desired to see his book, wherein the said entry was made; which book the said taylor then shewed them, and then told them, that he had, and could swear that the said Hewit was in town the week the earl of Essex died. Whereupon the said Hewit then told that taylor, that if he proved her then in town, he would thereby prove her brother Holmes to be in town, the day my lord died, and her brother would be then hanged, and his blood would lie at the said taylor's door.

Note, the said Holmes was taken into custody, in king William's reign, some short time after the discovery of the Assassination Plot. And the said Holmes was then charged with saying, that "The best way of taking off the witnesses, that proved that Plot, would be to cut their throats."

Now the defence of Holmes, against the charge of Dorothy Smith, appears to be false, in every material part of the defence. And whensoever the defence of a criminal appears to be false (as in the case of Holmes it appears to be) the same concludes his charge is true. The law concludes the same in all civil actions, for if the defendant's plea be good in law, but false in fact, and thereupon the plaintiff and defendant join a issue. If the jury find the plea to be false, they must then find for the plaintiff, and the court must thereupon give judgment accordingly.

And as a farther confirmation of Dorothy Smith's evidence, as to the duke's resolving, even before my lord's commitment, that his lordship's throat should be cut, it was deposed before the secret committee, that in the morning, on the 11th of July, 1683, which was the very morning next after my lord's commitment, it was reported at Frome in Somersetshire, an hundred miles from London, that the earl of Essex had cut his throat in the Tower. And it was likewise sworn, before the secret committee, that on the said Wednesday morning, being the 11th of July, 1683, it was reported at Andover (about 60 miles from London) that the earl of Essex had cut his throat in the Tower, when the king and duke of York were in the Tower. Whereas the king and duke did not go to the Tower until the Friday after this report at Andover. But this report at Andover, the next morning after my lord's commitment, and two days before my lord's death, that this lord had cut his throat in the Tower, whilst the king and duke were there, doth prove that the then duke of York, even before my lord's commitment, had resolved, that by some artifice, he would prevail with his then majesty to go with his highness to the Tower, that very morning, when the earl of Essex's throat was to be cut. And it seems very probable, that one of the designs which the duke had by the king's being then in the Tower; was to make the said three assassinates, and all his under-murdering confederates, to believe, that even the king himself, as well as his royal highness, had ordered the said earl's throat to be cut. And the duke well knew that such a belief in his under-tragical agents, would give them the greater encouragement to be concerned, in this treacherous and barbarous murder. But, in justice to the memory of king Charles the Second, I shall give the reader good grounds to believe, that his majesty was altogether ignorant of that designed and barbarous murder.

In short, eight witnesses have deposed before the Secret Committee, that before my lord's death, it was reported, in several parts of England, That the earl of Essex had cut his throat in the Tower. Which many reports, previous to my lord's death, that the earl of Essex had cut his throat in the Tower, must originally be occasioned by some correspondence of the confederating murderers in London, with their country confidants; whereby those bloody country zealots were informed, that it was resolved my lord of Essex's throat should be cut in the Tower, whilst my lord Russell was trying for his life, at the Old Bailey, but given out, as done by himself, and then should be carried to the Old Bailey, and then and there used by the king's counsel, as the strongest argument of guilt in my lord of Essex, in that (pretended) treasonable conspiracy, wherein that unfortunate lord, and the lord Russell, then at the bar, were accused as accomplices. And this report, before my lord of Essex's death, was probably occasioned, by the putting off my

lord Russell's trial, from Monday the 9th of July, to the Friday then following. And those country Popish correspondents, believing that my lord Russell was tried, when his trial was first ordered, and that my lord of Essex's throat was then cut, and being too big with that (to them) agreeable news, and willing to oblige their friends therewith, did therefore report (two days before my lord's death) that the earl of Essex had cut his throat in the Tower.

And as a farther argument of my lord's being murdered, and by the then duke of York's order. It is farther sworn by three witnesses before the Secret Committee, that Robert Meak, a soldier in the Tower, that morning my lord died, about two o'clock that very day, did, in Duke's Place, declare, that, whereas it was given out, that the earl of Essex had cut his own throat in the Tower; the said Meak was sure, that noble lord was barbarously murdered, by the duke of York's order: For (said Meak) those ruffians, who murdered my lord, were seen to go from the duke to that lord's lodgings a little before my lord's death.

But the said Meak, the very next day after my lord's death, did desire those three informants, to whom Meak had made such discovery as aforesaid, not to mention what the said Meak had so declared to them: For (said Meak) if it should be known, by any of our officers, that I have discovered so much, relating to my lord's death, I shall be undone; for this very morning, our captain called several of us soldiers together, and charged us, upon pain of death, not to discover, what we had seen, or heard, in contradiction to my lord's self-murder.

Note. If I was then rightly informed of the name of that captain of the guard, who commanded the soldiers to this silence—That very captain, was afterwards made a lord, by king James.

And sometime after Meak had made such discovery of my lord's murder, he told those three informants, he was afraid that very day he should be murdered, for what he knew relating to my lord's murder: For (said Meak) I have this day observed, that I am dogged, by two or three strange and suspicious fellows. And the said Meak, the very next morning after that, was found dead in the Tower-ditch, and just over-against the said major Webster's house, which stood very near that ditch.

And Meak was not the only soldier, who, the very day of my lord's death so freely discoursed of my lord's being murdered. For one Ruddle, another soldier in the Tower, that morning my lord died, in Baldwin's Gardens by Holbourn, did report to some friends, who before the Committee have sworn what Ruddle then declared, viz. That the lord of Essex was that day most barbarously murdered, by the duke of York's order: For (said Ruddle) those ruffians, who murdered my lord, I saw go from the duke to my lord's lodgings a little before my lord's death, and whilst that duke continued at some distance from the king; and the duke did not return to his majesty until his highness had notice of my lord's death. And the said Ruddle then declared, that he did believe that so barbarous and barefaced a murder, was never before that time, in England, committed.

And the said Ruddle was afterwards sent a soldier to the East Indies, and, at Fort St. George, was shot to death. But for what cause he was shot, I could never be informed.

And one John Holland confessed to a friend, that he himself was engaged by the lord —— to be concerned in cutting the earl of Essex's throat: and the said Holland told that friend, that several persons had been made away, for blabbing what they knew, relating to the earl of Essex's death. And sometime after my lord of Essex was murdered, the said Holland prevailed with a maid servant, belonging to one Dr. Gatford, to be concerned with him, the said Holland, and one Davis, in robbing the said Dr. Gatford, her master, for which robbery, the said Holland, Davis, and that servant-maid were condemned. But, notwithstanding upon that trial, it did appear, that Holland contrived, and drew that Davis, and the maid-servant, into that robbery; yet by my lord ——'s interest, that Holland was pardoned, when his two under-agents were both executed. And whilst that Holland was in Newgate, for that robbery, he was very cheerful and told his friends, that he was sure not to suffer, as long as my lord —— had any interest at court. And Holland bragged, that his lordship's secretary by his lordship's order, almost daily visited him, and supplied him with money. And after Holland had been pardoned for that robbery, he did very often wait upon my lord ——, and as soon as he sent his name to his lordship, he was immediately admitted; and when he came from his lordship, he would often shew to one John Waytis, his friend, then with him, many guineas, which Holland pretended, that lord had given him. And when that Waytis asked Holland, how his lordship came to be so kind to him. Holland swore, that he had done that thing, for his lordship, that he durst not do otherwise. And when that friend told Holland that it was whispered about that the earl of Essex was murdered. Holland swore, it was no matter if twenty such rogues, as Essex were so taken off.

Another argument of my lord of Essex's being murdered, was the illegal proceedings of those confederating murderers, to prevent the coroner's-jury of being rightly informed of some things very material relating to my lord's death For notwithstanding king Charles 2, then in the Tower, upon his being first informed of my lord's death, which was a few minutes after my lord's death was first discovered to those out of my lord's lodgings, did command my lord Arlington, sir Christopher Musgrave, and Thomas Howard, esq.; to go immediately to my lord's lodgings, and from

his majesty, to command, that my lord's body should remain in the same posture wherein it was first found, until the coroner's-jury had sat upon the body. And that my lord's warders, and servants, permitted to attend his lordship, might be secured, and by those three gentlemen (as above sent by the king) examined. But there was an authority, by somebody, to contradict these commands of his majesty. For as soon as sir Christopher had begun to take those examinations, there came a messenger, who pretended to come, from the king, to command sir Christopher to go immediately to the Old-Bailey, (where the lord Russell was then a trying for his life) and gave the Attorney-General notice that the earl of Essex had cut his throat. But sir Christopher told that messenger, that as soon as he had taken those examinations, which the king himself had commanded him to take, he would go to the Old-Bailey. But the same messenger soon came the second time, and pretended to come from the king, to command sir Christopher instantly to go to the Old-Bailey, and to leave those examinations to be taken by some others. Upon this repeated command (which was pretended to come from his majesty) in contradiction to what the king himself had just before commanded to be done, sir Christopher went to the Old-Bailey, and then and there, gave an account of his lord's death. But sir Christopher deposed that he could not recollect, who that messenger was, which twice came to him to countermand, as from the king, what the king himself had, just before, commanded sir Christopher to. And notwithstanding the king had commanded, that my lord's body should remain in that posture wherein it was first found dead, until the coroner's jury, had sat upon the body. Ths confederating murderers acted contrary to that command, for the day my lord died, his body was stripped, and his cloaths carried away, and when the coroner's-jury, the next day sat, and desired to see the cloaths, in which my lord was first found dead. This request of the jury being over-heard by some in the next room, the coroner was called into that next room, and after some short time returned to the jury, and in a passion told them, they were to sit upon the body and not the cloaths, the body they had seen, and that was sufficient.

And when one of the coroner's jury asked Bomeny, my lord's servant, whether his lord was not esteemed a good man? the said Bomeny then answered, that his lord was as good a man as lived. Whereupon that very juryman declared, that my lord could not then be guilty of self-murder.

But major Hawley being then with the jury, told the jury, that whosoever thought self-murder to be unlike my lord of Essex, did not know my lord's principles; for all men, well acquainted with his lordship, knew, that my lord of Essex justified self-murder, when a man was in danger of suffering death by an infamous punishment. This being sworn, before the secret committee, by some of the jury, The lords of the secret committee, did ask major Hawley, how he came to know that my lord of Essex, did, in such cases as aforesaid, justify self-murder? the major did then solemnly declare, that he never heard, until a long time after my lord's death, that his lordship did, in any case, justify self-murder, and therefore he could not be guilty of making such a suggestion to the jury. Besides, the major did then farther declare to their lordships, That he was not near the jury, at that public-house, where they did consider of their inquisition. But the major had given that jury repeated occasions to remember, that he was with them, at that public-house, whilst they were considering of their inquisition, and that the major did, then and there hurry the jury into their inquisition, much sooner than otherwise they should have finished their inquiries relating thereunto. For when some of the jury perceived, that none of my lord's relations or friends, did then appear, to prove any thing on behalf of his lordship. Some of those jurymen have deposed before the committee that they did move, they might adjourn their inquiries, to some farther day, and send notice thereof to my lord's relations; so that if his lordship's relations or friends could prove any thing in contradiction to the self murder, they might be heard by them, before they finished their inquiry. But major Hawley then prevented that adjournment, by telling the coroner and the jury, that his majesty had sent an express for their inquisition, and that his majesty was then in council and had declared, that he would not leave the council-board, until that inquisition was brought to him. The lords of the secret committee, upon hearing this sworn before them, did ask the major, who that man was, that thus pretended to be sent by his majesty, for this inquisition? whereunto the major made answer, that he never heard that his majesty had ever sent such an express, for that inquisition, and that he himself could not suggest the same to the jury; because he was not near the jury at that public-house all the time they did there consider of their inquisition.

Note. All that jury well knew major Hawley; and all of the jury, who were examined upon oath before the secret committee, did depose, that they did well remember, that the major was with them, at the public-house, and some of the most substantial and most sensible men of that jury, have deposed against the major, what is above-mentioned, by the major to be suggested to the jury.

Had that jury but viewed my lord's right hand, who was covered with a sheet, as well as his throat, which was cut, from that hand only, they might have had sufficient evidence, that my lord was murdered. For there were five cuts in my lord's right hand, viz. one upon his fore-finger near the top, another on the same finger near the hand, a third cut upon the fourth finger, a fourth cut in the little finger, and a fifth cut about two inches long in the palm of

my lord's right hand. But lest the jury might observe those cuts; my lord's hands were covered with the sheet, and after the two surgeons had viewed the cut in the throat, and the jury had seen the same, the jury were immediately adjourned, from my lord's lodgings to a public-house, in the Tower, where they were, as before related, hurried into their inquisition. But had the jury observed those five cuts in my lord's right hand, they could not believe they were any otherwise occasioned, than by my lord's endeavouring to keep off that murdering instrument, wherewith those assassinates cut his throat.

My lord's morning neckcloth was cut in three pieces, and therefore that neckcloth so cut, was carried away. But that alone would have proved, that the same instrument which cut my lord's throat, did first cut through that neckcloth. And this could not be supposed to be done by my lord himself with the razor.

There probably might be several other signs of violence to have been observed, from some other parts of my lord's cloaths, had those cloaths, in which my lord was found dead, been seen by the jury, but to prevent that discovery, the cloaths were carried away, and when, by some of the jury desired to see the cloaths wherein my lord was first found dead, that reasonable request was denied, and the deputy coroner, according to the direction of his managers, then in the next room to the jury, tells the jury it was the body, and not the cloaths they were to sit upon, and they had seen the body and that was sufficient.

And as the jury were hurried into their inquisition, and not suffered to make those inquiries which were absolutely necessary, in order to the discovery of the true manner of my lord's death; so were all informations to be quashed, which contradicted those before mentioned false informations given by Bomeny and Russel, to prove the pretended self-murder. And therefore when I the sixth day after my lord's death did wait upon the then secretary of state, with some informations to disprove what was, as before, sworn by Bomeny and Russel, I was ordered to attend his lordship the then next morning, with those informants, which I did accordingly. But before I, or either of those informants, was examined, I was taken into custody, and although it did appear upon examining these informants, by the king and council, that the substance of their informations they had declared some days before they either saw or ever heard of me, and that I did neither give or promise those informants, one penny for their informations, but I did often desire them to speak nothing but the truth, yet I was committed to the custody of a messenger until I gave bonds, with sureties in 2,000*l.* to appear the then next term, to answer such an information as should be exhibited against me. And when, after that, I rid into the country to inquire after some reports before my lord's death, in the several parts of the west, that my lord had cut his throat. I was taken up in the country and sent to Wiltshire gaol, from whence I removed myself to London, by Habeas Corpus, to be bailed, but my lord keeper North, at the council-board, did require of me bonds with very good sureties, 12,000*l.* for my appearance, and other bonds with other good sureties in 12,000*l.* more for my good behaviour. And my lord keeper, at the council-board, then told me that his lordship did require of me, as good men to be bound for my appearance, and good behaviour, as though his lordship was to lend the said 24,000*l.* out of his pocket. I then told that honourable board, that I could not give such bail and suretyship. But I desired their lordships, then at the council-board, that they would be pleased to send for several persons, whose names and places of abode I then gave an account of, who could prove that it was reported here two days before my lord's death, that my lord of Essex had cut his throat in the Tower. But I found their lordships were not inclined, to send for such informations.

I was after tried at the King's-bench bar, before my lord chief justice Jefferys, and the rest of the justices of that court, and though nothing criminal was proved against me, yet I only was found guilty of a conspiracy, to procure false witnesses to prove that my lord of Essex was murdered by those in whose custody he was, contrary to what had been found by the coroner's inquest. And those very men in whose custody my lord was, were brought at my trial as the principal witnesses to prove, that they themselves, did not murder his lordship; but that my lord himself did cut his own throat.

Mr. Hugh Speke was tried with me, and against him was produced a letter, which was taken upon me in Wiltshire, which letter was directed to sir Robert Atkins, then in Gloucestershire, and in that letter, were several expressions, reflecting upon the administration of those times; which letter Mr. Speke then confest he writ. But the then Attorney General found that it was not proved against me, that I directly or indirectly had given, offered, or promised one penny, to any person, whom I had discoursed, as to what he or she knew, relating to my lord's death; and that it was proved, I desired and charged every person, from whom I received any information, in relation thereunto, to speak nothing but the truth. And Mr. Attorney also found, that it was not proved against me, that I did ever, before my trial, say, that the earl of Essex was murdered. The Attorney General did thereupon say to the court and jury, That

'We need but read the letter, which Mr. 'Speke has owned, and you will say it is ten 'times worse, than what Mr. Braddon has 'done. Vide Braddon's Trial, (p. 1196, of this 'volume).'

But my lord chief justice Jefferys then reproved Mr. Attorney, for representing me less criminal than Mr. Speke.

But I was found guilty, not of subornation,

which was never mentioned in my information, but of conspiring alone, to procure false witnesses to prove, that the lord of Essex was murdered by those, in whose custody he was, contrary to what was found by the coroner's inquest; only upon the evidence of one of my lord's warders, in whose custody my lord then was, and the information of my lord's servant; the then only servant permitted to attend upon or speak to his lordship, and which very servant and warder, by their respective stations, at the time of my lord's death, must be privy to it, if not acting in that murder, in case his lordship was murdered by others.

But nevertheless this warder and that servant were by that Court of Kings-bench, admitted as good witnesses, not only to clear themselves, and their murdering confederates, from justice, for that murder; but also to lay the charge thereof only at my lord's own door. And those two witnesses were farther admitted, to be good proofs to convict me, as a criminal, only for endeavouring, by lawful means, to prove this warder and that servant, with their other murdering confederates, guilty of my lord's blood.

But were all murderers to receive the like corrupt favourable protection, and encouragement, from judge and jury; and were all their prosecutors to be alike treated, upon the evidence of such murderers, as I in this case have been treated, all hireling, bloody bravoes, under such a corrupt administration, would then be encouraged to be hired, by the bloody men, in great power, to cut any good man's throat, who did oppose their arbitrary and tyrannical designs; and all men would be discouraged from being their prosecutors.

The great perversion of justice, in my prosecution and punishment, is one great argument to prove, that no less power, than that of the then duke of York, could have prevailed with the then ministry, and the court of King's-bench, to become screens instead of terrors, to those murderers; and prosecutors, instead of encouragers, to those who would have detected them.

And that the then duke of York, had used his utmost interest in my severe prosecution and arbitrary punishment, plainly appeared by that duke's declaring (sometime before my trial) to several noblemen and gentlemen, that he would ruin me, if all the interest he had could do it, for having been so busy in relation to the late earl of Essex's death.

And so far that duke prevailed, as to get me to be imprisoned for my life, had not the Revolution discharged me: For

I was fined 2,000*l.* and ordered to give security for the good behaviour during life; under which judgment I continued a prisoner above five years, before king James went off.

But the duke of York had declared before that judgment given, that I should be whipt round Tower-hill, and then and there stand upon the pillory. And, after that, be whipt and pilloried, at some other places.

And those arbitrary cruelties had probably been my fate, had not the then king himself prevented that barbarity: For since the Revolution, I was credibly informed, that

The very morning I was to receive my judgment, the lord chief justice Jefferies waited upon the king, and desired to know, what corporal punishment he should inflict upon me. But king Charles did then strictly command that chief justice not to inflict any corporal punishment upon me.

So that when upon the court's giving judgment against me, some of the king's, or rather the duke's council moved, that I might, besides the fine, and good behaviour, be farther corporally punished, the court gave them no answer to that motion.

If to screen the duke, I was thus arbitrarily treated, by that corrupt ministry, for endeavouring to prove, by circumstantial evidence, that my lord of Essex was murdered, by some hired ruffians, with the privity and consent of his warders and servant. It was not reasonable to hope, that the same ministry would give the least encouragement to him, who should offer, upon a promise of pardon, positively to prove my lord's murder upon that duke. And therefore when a letter unsealed, was left with a bookseller, in Durham Exchange, in the Strand; but directed for the countess of Essex; wherein it was offered, that if her honour could prevail with the king, to give an assurance of pardon to that author; he would then prove that the duke of York, and —— had ordered my lord's throat to be cut. But when the bookseller perceived that letter to be unsealed, he read the same; and finding the contents thereof, to be of such an high nature as above-mentioned, he did not think it safe for him, to carry the same to the countess of Essex, to whom it was directed, but he did immediately carry that letter to a justice of the peace, who did thereupon carry the same to the secretary of state. But that bookseller was never sent for by that secretary of state, or was there any means used, by those then in power, to find out the author of that letter.

Had my lord of Essex indeed murdered himself, or had his lordship been murdered by others, without the privity of the then duke of York, whom that letter charges as the principal person, that ordered that murder; no probable means would have been then wanting, nor any reward thought too little, to discover the author of that letter. But the then secretary of state stifling that letter, is a very strong argument, That the contents thereof was true, and that the then duke of York's authority and interest gave birth to that most perfidious and barbarous murder.

The most material things herein before writ, as sworn before the Secret Committee of Lords, or some justices of the peace, to prove my lord's being barbarously murdered by others, were published in a Discourse, which I printed in 1690, and entitled, "Essex's Innocency and Honour vindicated. In a Letter to a Friend."

And in that Letter I did endeavour to answer several Objections, which in conversation I had met with, against my lord's being murdered by others. And in particular, in pages 54 and 55 of that Letter, I did endeavour to answer, what was publicly discoursed, as to the countess dowager of Essex's belief of her lord's pretended self-murder. And what I had writ, in those two pages of that letter, relating to that belief, was expressed in the terms following, viz.

'The right honourable the countess dowager of Essex, having, heretofore declared, 'whether lately I cannot say, that she did believe her lord did cut his own throat; and 'being so possessed, some time after this committee had several times sat, she desired several lords (amongst which some were of 'this right honourable committee) to meet at 'her house, and after her honour had acquainted their lordships with the occasion of 'her request, an eminent divine (and now a 'bishop) did inform their lordships, what were 'the reasons that moved her honour to believe, 'that her lord did indeed lay violent hands on 'himself; the chief, if not the only one, was, 'That

"Some short time before my lord's commitment to the Tower, he did seem to be under a great concern of mind; but then declared, that the trouble he was in, did not arise from any thoughts of self preservation, for himself was the least of his care; but the thoughts of his family, what would, after his death, become of them, was what did indeed trouble him: as for himself he was resolved what to do, several times very resolutely repeating that expression; as for myself, I am resolved what to do."

'This I was told by a gentleman, who (said he) was then present, and, as I have great reason to believe, would have represented every thing to the best advantage (as far as truth would permit) on the behalf of such objections.'

Believing that a gentleman, who gave me the above relation, I did then endeavour to answer, what his lordship was, (as above) said to have declared to his countess, a little before his commitment, and which was represented to me to make her honour believe that his lordship murdered himself, and I did endeavour to shew, that expression,

"As for myself I am resolved what to do," which (as I was informed) was several times resolutely repeated, might be very well understood to bear a more charitable construction, than self-murder. And I did, in that book, put that interpretation thereupon, which, to me, seemed not only to be more charitable, but also much more probable.

But some time after the publication of that Letter, relating to his lordship's death, I read in three several Gazettes of July and August, 1690, a Declaration subscribed by the countess and bishop, in the words following, (viz.)

'Whereas in a Letter to a Friend written by 'Mr. Laurence Braddon, touching the murder 'of the earl of Essex, an account is given, page '54 and 55, of some discourse, that the countess Dowager of Essex, and the bishop of 'Salisbury had upon that subject, at a meeting 'with several lords; the countess dowager, 'and the bishop, find themselves so much 'wronged in that relation, that they have 'thought it became them to disown it intirely, 'the whole discourse, fastened on them, being 'false, and nothing to that purpose, having 'been, upon that occasion, mentioned by either 'of them.

'24th July. E. ESSEX, GI. SARUM.'

Notwithstanding the countess and the bishop, have herein disowned, that the reason, herein before-mentioned to have been given by the bishop, to those lords and gentlemen, at her ladyship's house, as the reason, which influenced her honour to believe her lord did indeed cut his own throat. Yet it is most certain, that, several lords and gentlemen, at her ladyship's request did meet at her house, when and where Dr. Burnet (afterwards bishop of Sarum) did give those lords and gentlemen some reasons, which (that doctor) then said, did make her ladyship believe her lord did murder himself. But forasmuch as the countess and bishop have declared, that before my information, as to those reasons, was false, and seeing I could never learn, what was otherwise declared by the then Dr. Burnet, at that meeting, on behalf of that belief of the countess; I cannot answer, what I do not know; neither will I be implicitly ruled, by the belief of the countess and bishop, to the belief of the self-murder, in contradiction to what is, by so many witnesses, herein before said to be positively sworn, to prove, that my lord fell a sacrifice to popish malice and rage, for his lordship's great zeal, for our religion, laws, and liberties. The bishop, in his late History, is pleased to say, that for some years before my lord's death, he knew me to be an honest, but enthusiastical man. And that bishop doth farther therein declare, that it appeared, at my trial, that I had charged the boy to sign nothing but the truth, in relation to my lord's death.

Now forasmuch as I had declared, in page 54 of my former book, that a gentleman had told me, that he was present, with several lords and gentlemen, at my lady Essex's house, when and where, that bishop, gave the reason before-mentioned, in page 54 and 55 of that former printed letter, touching my lord's murder, for her honour's belief of her lord's self-murder. It was reasonable for me, to have expected, that justice from the bishop to have sent for me, before, in three several gazettes, he had endeavoured to expose me, and to have known of me, from what gentleman, I had received that which the countess and bishop have called a false information. Had the bishop demanded this from me, I should (as in justice bound) have named my informer. And I do now assure the reader, that the gentleman, who gave me that infor-

mation, was generally reputed a man of great learning, and honour, and therefore deserving credit. He was then a member of parliament, and had served as knight of the shire for that county, wherein his family had lived in great esteem, for many ages. But neither the countess, or bishop, either before, or after, the publication of that declaration in three several gazettes, did ever desire me to tell them, from whom I had received my information. But I am now well satisfied, by what the bishop hath writ, in his late History, relating to my lord of Essex; that the Countess Dowager of Essex, was prevailed upon by that bishop's advice, not to be at all concerned in the prosecution of her lord's murder. But of this, I shall say much more, when I have related, what the bishop, in his late History writ, concerning that unfortunate lord's imprisonment and death: and what that prelate hath published, in relation thereunto, is contained in the two following paragraphs of that History, (viz.)

In page 552, A. D. 1683.

'A party of horse was sent to bring up my 'lord of Essex, who had staid all this while at 'his house in the country, and seemed so little 'apprehensive of danger, that his own lady 'did not imagine he had any concern on his 'mind. He was offered to be conveyed away 'very safely, but he would not stir, his ten'derness for the lord Russell, was the cause of 'this: for he thought his going out of the 'way, might incline the jury to believe the 'evidence the more for his absconding. He 'resolved, as soon as he saw how that went, to 'take care of himself. But when the party 'came to bring him, he was, at first, in some 'disorder, yet he recovered himself. But when 'he came before the council, he was in much 'confusion. He was sent to the Tower, and 'there fell under a great depression of spirits. 'He could not sleep at all. He had fallen 'before that twice, under great fits of the 'spleen, which returned now upon him with 'more violence. He had sent by a servant, 'whom he had long trusted, and who was suf'fered to come to him, a very melancholy 'message to his wife, That what he was 'charged with was true: he was sorry he had 'ruined her and her children. But he had 'sent for the earl of Clarendon to talk freely 'to him, who had married his sister. She 'immediately sent back the servant to beg of 'him, that he would not think of her, or her 'children, but only study to support his own 'spirits, and desired him to say nothing to the 'lord Clarendon, nor to any body else, till she 'could come to him, which she was in hopes 'to obtain leave to do, in a day, or two. Lord 'Clarendon came to him upon his message, 'but he turned the matter so well to him, as if 'he had been only to explain somewhat, that he 'had mistaken himself in, when he was before 'the council. But as for that for which he 'was clapt up, he said, there was nothing in 'it, and it would appear how innocent he was. 'So the lord Clarendon went away in a great 'measure satisfied, as he himself told me. 'His lady had another message from him that 'he was much easier, especially when he found, 'how she took his condition to heart, without 'seeming concerned for her own share in it. 'He ordered many things to be sent him. And 'among other things he called, at several times, 'for a penknife, with which he used to pare 'his nails very nicely; so this was thought as 'he intended for an amusement. But it was 'not brought from his house in the country, 'though sent for. And when it did not come, 'he called for a razor, and said that would 'do as well. The king and the duke came to 'the Tower that morning, as was given out, to 'see some invention about the ordnance. As 'they were going into the barge, the cry came 'after them, what had happened to the lord of 'Essex. For his man thinking he had staid 'longer than ordinary in his closet, he looked 'through the key-hole, and there saw him 'lying dead, his throat cut, so that both the 'jugulars and the gullet were cut, a little above 'the aspera arteria. I shall afterwards give an 'account of the farther inquiry into this matter, 'which past then universally as done by him'self. The coroner's jury found it self'murder, and when his body was brought 'home to his own house, and the wound was 'examined by his own surgeon, he said to me 'it was impossible the wound could be as it 'was, if given by any hand but his own, for 'except he had cast his head back, and 'stretched up his neck all he could, the aspera 'arteria must have been cut. But to go on 'with this tragical day, in which I lost the two 'best friends I had in the world.'

I presume the bishop here means, the lord of Essex, and the lord Russell, who was that day tried at the Old-Bailey, and found guilty of high-treason.

In page 569, A. D. 1684.

The bishop hath the following paragraph, relating to that great but unfortunate lord:

'I past slightly over the suspicions that were 'raised upon the lord of Essex's death, when 'I mentioned that matter. This winter this 'business was brought to trial. A boy and a 'girl did report, that they heard a great cry'ing in his lodging, and that they saw a bloody 'razor flung out at a window, which was taken 'up by a woman that came out of the house 'where he lodged. These children reported 'this confidently, that very day, when they 'went to their several homes. They were both 'about ten or twelve years old. The boy 'went backward and forward in his story, 'sometimes affirming it, and at other times 'denying it: But his father had an office in 'the custom-house; so it was thought he pre'vailed with him to deny it, in open court. 'But the girl stood firmly to the story. The 'simplicity of the children, together with the 'ill-opinion that was generally had of the

'court, inclined many to believe this. As soon 'as his lady heard of it, she ordered a strict 'inquiry to be made about it, and sent what 'she found to me, to whom she had trusted all 'the messages that had past between her lord, 'and her, whilst he was in the Tower. When 'I had perused all, I found there was not a 'colour to found any prosecution on, which 'she would have done, with all possible zeal, 'if she had found any appearances of truth in 'the matter. Lord of Essex had got into an 'odd set of some strange principles. And, in 'particular, he thought a man was the master 'of his own life, and seemed to approve of 'what his wife's great-grandfather, the earl 'Northumberland did, who shot himself in the 'Tower, after he was arraigned. He had also 'a very black fit of the spleen. But that time 'one Braddon, whom I had known for some 'years for an honest, but enthusiastical man, 'hearing of these stories, resolved to carry the 'matter as far as it would go, and he had pick-'ed up a great variety of little circumstances, 'all which laid together, seemed to him so 'convincing, that he thought he was bound to 'prosecute the matter. I desired him to come 'no more near me, since he was so positive. 'He talked of the matter so publicly, that he 'was taken up, for spreading false news, to 'alienate the people's hearts from the king. 'He was tried upon it, both the children owned 'that they had reported the matter, as he had 'talked it, the boy saying then that it was a 'lie. Braddon had desired the boy to set it all 'under his hand, though, with that, he charg-'ed him to write nothing but the truth. This 'was called a suborning. And he was fined 'for it in 2,000*l.* But I go next to a trial of 'more importance.'

The bishop, in the first of the aforesaid two paragraphs, saith, that before my lord was taken up, he was offered to be conveyed away very safely; but that this his lordship refused, out of tenderness for my lord Russell; because he thought, that his going out of the way, might incline the jury to believe the evidence (against my lord Russell) for his absconding.

Remarks. It is reasonable then to think, that the same tenderness for that noble friend, should also have hindered my lord of Essex from cutting his own throat, at such a time, as that very friend was bringing upon his trial for life; for his lordship must believe, that such his self-murder, would soon be carried to the Old Bailey; and be then and there urged, by the king's counsel, as a greater argument of guilt, in his lordship, than his absconding would have been, and that such his lordship's supposed guilt, would be then misapplied, by the king's counsel, against the lord Russell, then charged as an accomplice with his lordship, in a treasonable conspiracy. But

My lord bishop doth farther say, that' when my lord of Essex was sent prisoner to the Tower, he fell under a great depression of spirits, so that he could not sleep at all. That my lord had fallen, twice before that, under great fits of the spleen, which now returned upon him with greater violence.'

Remarks. All this melancholy story, did originally come from Bomeny himself, for that fellow (soon after his lord's death) did inform Dr. Burnet, the late bishop of Sarum, That his lord did use to be taken with sudden frenzical passion; and in particular, was seized with one that very morning my lord died, not half an hour before they found him dead: For said this fellow, when my lord saw my lord Russell go to his trial, he struck his breast, and said, that he himself was the cause of my lord Russell's misfortune: For had not I (said the earl) vouched for my lord Howard's fidelity, my lord Russell would never have trusted him. And hereupon his lord went up and down his chamber, striking his breast. And in this violent passion I left him, (said Bomeny) and saw his lordship no more, till I found him dead in the closet.

Dr. Burnet, soon after Bomeny had given him that information, gave me an account thereof, when I waited upon him at his house in Brook's Buildings, near Brook's market, by Holborn.

Remarks. But I did then endeavour to persuade the doctor, that what Bomeny had thus related of my lord's (pretended) frenzical passions, and in particular that morning he died, deserved no credit, but was justly to be suspected as forged and false, to give countenance to the self-murder. For Bomeny's constant attendance upon his lord in the Tower, did render him knowing of what was done to his lordship, as well as by his lordship, just before his death. If therefore my lord was murdered by others, this Bomeny must be privy thereunto, if not an actor therein, and therefore this Judas will say, or swear any thing, he should by his confederates be taught, to prove the (pretended) self-murder; for if he, and Russel could not persuade the world to believe that my lord murdered himself; both those attendants, and some of their murdering confederates, must expect to be hanged, for murdering his lordship. The common and civil law, and (I believe) the laws of all civilized nations upon earth will not admit that man to be a good witness in a cause, when it shall be made appear that such a witness must get, or lose, by the success of that cause.

But the bishop will sooner give credit to what this Bomeny (with an halter about his neck) had informed him, as to my lord's having been seized with (pretended) frenzical passions, and in particular with one, just before his death; in order to make the world believe, that, under that passion, his lordship murdered himself. Than the bishop will believe what is (as before said to be) sworn by more than fifty disinterested and credible witnesses, to prove my lord's being murdered. But my lord bishop did not think fit, in this History, to tell the world from whom the bishop had received information, that my lord of Essex had (before his imprisonment) twice fallen under great fits of the spleen,

which returned now (whilst a prisoner) upon him with more violence. None but this Bomeny, or my lord's warders were permitted to come to his lordship, whilst a prisoner, and therefore none else could possibly, had the thing been true, give information, of this return of a fit of the spleen, with more violence whilst his lordship was a prisoner. And seeing that servant and those warders, must have expected to have been hanged for the murder of my lord, in case those three attendants could not make the world to believe that his lordship murdered himself. What therefore those three vile fellows shall say or swear, deserves no credit, when contradicted by multitudes of disinterested and credible witnesses, who prove, by many convincing circumstances (before particularly related) that my lord of Essex was treacherously and barbarously murdered.

The bishop saith, 'That my lord had sent by 'a servant, whom he had long trusted, and who 'was suffered to come to him, a very melan'choly message to his wife, that what he was 'charged with was true.'

Remarks. I could never yet learn, that any servant, besides Bomeny, was suffered to speak to his lordship, whilst a prisoner, and by the bishop's account, even my lady herself, had no such liberty, but she was in hopes to obtain it. Now if such a pretended message from his lordship, was mediately or immediately by Bomeny delivered to his lady, there is just cause to believe, that by those murdering confederates Bomeny was instructed to send such a message to my lady, because Bomeny was in no danger of being detected by my lady: For Bomeny well knew, that my lord was to be murdered the then next morning, and that my lady would never obtain any liberty to see her lord, whilst a prisoner in the Tower.

This pretended message from my lord to my lady, puts me in mind of what a papist (less than two years since) told me, viz. That he was sure my lord Essex cut his own throat, because he was credibly informed, that his lordship, even the day before his death, had by message, or letter, assured his lady, that the then next day he would cut his throat.

I could not but laugh at the folly of this informer, either in believing such a story himself, or thinking to impose the belief thereof upon others. But if Bomeny's murdering confederates, had thought fit by Bomeny to send, as from his lordship, such a message to my lady, as my informer had foolishly suggested he did send, I do not question, but Bomeny would therein have obeyed their orders: seeing Bomeny himself well knew, that the then next day, after such a message sent, my lord's throat was to be cut.

'My lord,' saith the bishop, 'ordered many 'things to be sent to him. And among other 'things he called several times for a penknife, 'with which he used to pare his nails very 'nicely. Which not being brought to the 'Tower, he called for a razor, and said, that 'would do as well.'

Remarks. That Bomeny did twice, whilst in the Tower, send to my lord's steward for a penknife, pretending it was for my lord, is true: because that penknife was to be laid by my lord's body, as the pretended instrument of my lord's death. But that penknife not being brought, before my lord's throat was cut, a razor was therefore pretended to have been given to his lordship to pare his nails, and that razor was laid by the body in the closet, as the pretended instrument of my lord's self-murder. But that this story of the delivering a razor to my lord in the Tower, was forged and false, I hope I have sufficiently proved, by the many contradictions hereinbefore observed, as to the time of delivering this razor to my lord. But that the penknife was first intended to be laid by the body, as the pretended instrument of the self-murder, appears very probable, not only from Bomeny's sending several times for the pen-knife, but also even from what Bomeny swore at my trial. For when Bomeny was there sworn, my lord chief justice Jefferies asked Bomeny, How came your lord by that unhappy end, pray?

In answer to which, Bomeny swears, That his lord did call several times for a penknife, to pare his nails; and he doth not once mention, in the first paragraph of his examination (at my trial) the delivery of any razor to my lord, but after, in that paragraph, he hath several times mentioned the penknife, he then swears, that he saw his lord walking in the room, and picking of his nails with the pen-knife. But my lord chief justice Jefferies knowing what Bomeny was to swear, here interrupts him, saying, How, with a penknife?

Then Bomeny, recollecting his instructions and former oath, saith,

No, with a razor, which I gave him. Braddon's Trial, (see p. 1198, of this volume.)

The bishop saith, 'That when my lord's 'body was brought home to his own house, 'and the wound was examined by his own sur'geon, he told me, it was impossible the wound 'could be as it was, if given by any other hand 'but his own.'

Remarks. This undoubtedly the bishop believed to be true, from that surgeon's knowledge in anatomy, though the reason which that surgeon gives for such his opinion, is both false and ridiculous, viz. 'For,' saith that surgeon, 'except he had cast his head back, and 'stretched up his neck all he could, the *aspera* '*arteria* must have been cut.'

Remarks. Here my lord's surgeon seems to deny that the *aspera arteria* were cut; whereas the two surgeons, which viewed the body in the Tower, swore, that the *aspera arteria* were cut. But admitting they were not cut, the ridiculous part of this surgeon's reason, wherefore none but my lord could give that cut, consists in saying (to this effect) That no persons whatsoever could hold my lord's head so far back, and stretched out his neck so much, whilst his throat was cutting, as my lord himself could do. Now this is contrary to what

was declared (before the Lords of the Committee,) by several judicious physicians and surgeons, who were great anatomists. For all those anatomists told their lordships of the committee, that they would positively say that it was impossible for my lord to cut his throat through each jugular vein, even to the neck bone, and behind each jugular vein, on each side the neck, as some judicious surgeons, who had observed my lord's cut, had reported it to be cut. But this they could be positive in, (viz.) that they never saw any man's throat, which was cut by himself, that was so cut. And they did then farther declare to their lordships, that they did believe, when any man had cut through one of his jugular veins, and the gullet and wind pipe, nature would be so much weakened, by the great effusion of blood, and animal spirits, that the *felo de se* would not have natural strength sufficient, to cut through, and behind the other jugular, as my lord's throat was said to be cut. Besides my lord bishop was credibly informed, that my lord's centinel had confest, the letting in three men to my lord a little before his death, and that thereupon he heard great trampling in my lord's chamber, and something fell, or thrown down, like the fall of a man. And the bishop was further credibly informed, that four men were seen bustling in my lord's chamber, a little before his death was known, and that one of those four, this informant heard cry out murder! several times.

Now I desire to know, whether two of those assassinates lying on my lord's body, and with the additional weight of the third ruffian's body? I say whether two of those three, thus assisted with the third bravoe's weight, could not keep my lord upon his belly, whilst the third man with one hand pulled back my lord's head, and stretched out his neck as far, and as long as it was necessary to be stretched out, whilst with the other hand, he cut his throat, almost round the neck, as my lord's was cut? Certainly these ruffians could much better give such a cut, than my lord himself could do it.

Remarks. The bishop was capable (from many proper vouchers) of giving a short, and yet an intelligible account, of what was proved before, at, and after my trial, relating to my lord of Essex's being barbarously murdered. But I never read, so imperfect and confused a relation, given by an historian, of any considerable fact, as the bishop gives (in the second recited paragraph) of what was proved before, and at my Trial, relating to my lord's murder.

For the bishop knew, that it was sworn before the coroner, by my lord's servant, and one of his warders, (in substance) That, 'A razor 'was delivered to my lord to pare his nails, that 'he therewith retired into his closet, and locks 'the door, and that being opened, my lord's 'body was there found with his throat cut, and 'that razor lying by the body.' The bishop also knew, that upon this being sworn, my lord of Essex was found *felo de se.*

Now the bishop also knew, that what the boy and girl (by him before-mentioned) had related, the morning my lord died, to their respective relations, was a contradiction to what was sworn before the coroner. For,

Those two children declared, That they saw a bloody razor thrown out of my lord's chamber window, before it was known (to any out of that house) that my lord was dead, and that the maid, who took up that razor, and carried it into my lord's lodgings, did thereupon first discover my lord's death to those out of that house. So that this razor was not locked into the closet, with my lord's body, as Bomeny and Russel had sworn before the coroner.

But I would gladly know, of any man, who reads only my lord bishop's before-mentioned relation of that matter, whether he can thereby tell, how the two children's seeing a bloody razor thrown out of a window, did any ways contradict, what was sworn before the coroner to prove the self-murder. Or how that relation of those two children (as by the bishop represented) did any ways tend to prove my lord's being murdered by others.

The bishop, in the second before-mentioned paragraph, gives a very imperfect and unintelligible account of my trial; and therein saith, that the boy denied (in the court) his having seen a bloody razor thrown out of a window. But saith the bishop, the girl stood firmly to the story. And that as soon as my lady heard of it, (which must be understood of what was sworn at my trial) 'She ordered a strict inquiry to be made about it, and sent what she found to the doctor, to whom she had entrusted all the messages that had past between her lord and her, whilst in the Tower. When I,' saith the bishop 'had perused all, I found there was not colour to found a prosecution on, which she would have done with all possible zeal, if she had found any appearance of truth in the matter.'

Remarks. It seems strange to me, that my lady's agents, whom she had employed in those inquiries, after what was proved at my trial, concerning my lord's being murdered, should never discourse me, nor any of those witnesses by me then produced, relating thereunto. And I do here solemnly declare, that neither of those agents, and to me known to be such, did ever, after my Trial, and before the Revolution, discourse me, or (to my knowledge or belief) did they discourse any of my witnesses, by me produced, concerning that matter. And I cannot tell from what other persons, her honour could have received a better information, than from me, or from some of those witnesses, as to what was, by them sworn, relating to my lord's death. And I did never hear, before this History was published, that any persons from my lady, had ever made such an inquiry, as the bishop here mentions. Neither did I ever speak to my lady, or to her son, the father of the present earl of Essex, in all my life. But I have now just cause to believe, by what the bishop hath before writ, in relation to me; and by the bishop's treating me,

with great contempt, ever since I renewed the prosecution of this matter in 1688, that this bishop represented me to her ladyship, and to her son, the late earl, as an enthusiastical, and 'a very contemptible fellow, and from whom no informations were to be regarded, and therefore it was not fit to discourse me upon that occasion, or was I by her, or her son, to be at all considered, for what I had expended, or otherwise done or suffered before the Revolution, for endeavouring, by lawful means, to vindicate his lordship's memory, and to wipe off that great stain upon his family, from that infamous, but indeed false, charge of self-murder by his lordship.

But I must here do that noble family the justice to declare, that they were at the charge of near a twelve-month's prosecution of this murder, before the lords committees, and several justices of the peace, before whom, in the interval of parliament, several witnesses were examined in relation to this murder. For

Upon the 23d of February, 1688-9, when the first general committee of lords met, to inquire into my lord's death, and upon whose lordships I then attended. The then earl, but afterwards duke of Devonshire, was chairman, and that noble lord then declared to their lordships of that committee, that it was very unreasonable that I, who had suffered so much, in person and purse, in the then preceding reigns, for endeavouring to discover the true manner of my lord of Essex's death: should be at any farther expence in the then prosecution thereof.

And, some short time after this, sir Henry Capel, afterwards lord Capel, the then late earl of Essex's brother, desired me to meet him such a day and hour, at Mr. Wallop's chamber in the Temple; where I waited upon him accordingly; and sir Henry told me, that I should be assisted, with whatsoever money should be necessary, for a vigorous prosecution of that matter, and that I should be well rewarded, for what I had done, or suffered, or should do, in the service of the family. And thereupon I was supplied, from time to time, with what money I desired, in about twelve months time, in the prosecution of this murder, before the Secret Committee of lords, and some justices of the peace, who, in the interval of the sessions of parliament, had taken several informations in relation hereunto, and some of those witnesses were sent for above 100 miles, some about 70 miles, and some 30 miles, and they gave several attendances upon the lords' committees, in relation to their respective informations.

The bishop saith, 'That my lord of Essex 'had got into an odd set of some strange principles. And, in particular, that my lord 'thought a man was master of his own life, and 'seemed to approve of what his wife's great 'grandfather, the earl of Northumberland, did, 'who shot himself in the Tower, after he was 'arraigned.'

Remarks. Here the bishop would have the world believe, that my lord of Essex, in some cases, justified self-murder.

I do not think the bishop himself was the first inventor of this false charge against his lordship, of justifying self-murder, because, by what I heard sworn before the committee of lords, I have good cause to think, that false charge was first forged by my lord's confederate murderers to make the jury and the world believe, that when my lord cut his own throat, his lordship did only put his own principles into practice.

And here I must beg the reader's patience and permission, for repeating, what I have herein before declared to be sworn, before the Secret Committee of Lords, relating to this matter. And I do hereby again solemnly declare, that before that committee, it was (in substance) sworn, when I was attending upon that committee, by Mr. Fisher, a very substantial and a very honest man of the jury, That

This juryman told Bomeny, (my lord's servant) that he had heard, his lord was a good man. Whereupon Bomeny declared that his lordship was as good a man as lived. Then (replied the juryman) it is very improbable so good a man, should be guilty of the greatest sin, for (saith the juryman) no crime can well be greater than self-murder.

Hereupon major Hawley then told that juryman, that whosoever thought that self-murder was unlike my lord's principles, was not well acquainted with his lordship; for many gentlemen who were intimately acquainted with his lordship, had often heard his lordship declare, that any man might cut his own throat, or otherwise destroy himself, to avoid an infamous death. And therefore, saith Hawley, this self-murder, is according to my lord's avowed principles. And that juryman did then farther depose, that he, believing this suggestion from major Hawley, was the sooner inclined to believe that my lord himself had indeed cut his own throat.

But when their lordships, of the committee, asked major Hawley, by whom had he been informed, that my lord of Essex had ever justified such a self-murder? The major did thereupon solemnly declare to their lordships, that, before my lord's inquisition was taken, he did never hear my lord had been of such principles, and therefore he could not suggest the same to the jury. - And the major did then also farther declare, that he was not near the jury, at that public house, where they did consider of their inquisition, all the time that jury was upon that inquiry.

It is well known to many gentlemen now living, and that were men of conversation about town, a little after my lord's death, that it was in all parts of the city and suburbs, industriously reported, that my lord of Essex had justified self-murder, as lawful, to avoid an infamous execution. But major Hawley's denying that he did ever suggest this to the jury, which is positively sworn against him, and then declaring that, never before the taking that inquisi-

tion, did he hear my lord charged with holding such a principle. This denial of the major, plainly proves, that he was conscious to himself, that this pretended principle, by him charged upon his lordship, before the coroner and his jury, was a false suggestion, and maliciously invented lie, and forged by my lord's murdering confederates, some of which had, before that jury sat, therein pre-instructed the major, and had engaged him therewith to corrupt the jury, so that they might be the sooner inclined to believe, that my lord did indeed cut his own throat.

After the bishop (in the before second inserted paragraph) had given a confused and imperfect account of a trial, without saying whose trial, relating to my lord's death. And of what two children, at that trial, had sworn, relating to a bloody razor thrown out a window, without saying whose window. And of what inquiries the lady Essex had made, in relation to what, at that trial was sworn, about her husband's death. The bishop then saith

"But that time (which by the bishop's before relation only, will be understood to be after the trial beforementioned) one Braddon, whom I, said the bishop, had known for some years, for an honest but enthusiastical man, hearing of those stories (which most men understood to signify all the facts, which the bishop in that paragraph had before related) resolved to carry the matter as far as it would go, and he had picked up a great variety of little circumstances, all which, laid together, seemed to him so convincing, that he thought he was bound to prosecute the matter. I, saith the bishop, desired him to come no more near me, since he was so positive. He talked of the matter so publicly, that he was taken up for spreading false news, to alienate people's hearts from the king."

Remarks. I stand amazed how the bishop (in his Preface to his late History) could make an humble appeal to the great God of truth, that, in his said History he tells truth on all occasions, (and consequently in his two before recited paragraphs, and in all other parts of that History; for to all parts thereof that humble appeal is applicable) as fully and freely as upon his best inquiry he was able to find it out.

Now I will not say that the bishop knew several facts (in the two before recited paragraphs) related as true to be false.

But I am sure he had received such information upon oath, as would have made any judicious and unprejudiced gentleman to believe several of those of facts therein asserted for true, to be false.

And, in particular, the bishop, in the second recited paragraph, in substance, saith

"That it was believed the boy's father, who had a place in the Custom-house, had prevailed with the boy at the trial to deny his having seen a bloody razor thrown out of the window."

Whereas the bishop knew that the father, at my trial, upon his son's being sworn, did in a most solemn manner, charge his son to speak the truth. And the father did then repeat that solemn charge to his son, to speak nothing but the truth. (Vide Braddon's Trial, p. 1151, of this Volume.)

And the bishop was also credibly informed, that this son, when eighteen years of age, did depose before the Lords' committee, that the reason wherefore he did, at my trial, deny his having seen the bloody razor thrown out of the window, was, because major Hawley, at whose house my lord was murdered (the morning of my trial) did threaten him, a little before he was examined in court, and told him, in great rage, that he ought to be whipped, once a fortnight for seven years following, for reporting that he saw the bloody razor thrown out of the window. And the boy did depose, That such threatening from major Hawley did make him deny it at my trial, lest he should be severely punished, if he had sworn it to be true. And the bishop saith that the boy went backwards and forwards, in his story, sometimes affirming, and at other times denying it. Whereas the bishop was credibly informed, by the oaths of that boy, and his sister before the Lord's committees, when the boy was 18 and his sister then above 20 years old, that the only reason of that boy's first denying the truth, of what he had reported, relating to the razor, was because that sister (in a threatening manner told him, when thirteen years of age) that he would be hanged for that report, and that his father would be turned out of his place, and all the family would be ruined.

The bishop saith, that 'I had picked up a great variety of little circumstances relating to my lord's death.'

Remarks. It had been but justice, to the true character of my lord of Essex, and it had been but gratitude to the memory of the bishop's noble benefactor, for the bishop to have particularized that great variety of (what the bishop calls) little circumstances, in proof of my lord's being murdered; and the bishop should have left the world to judge, whether that great variety of circumstances, I had picked up, had been little or great proofs of my lord's having been barbarously murdered. And, without particularizing the circumstances, of all which the bishop had been particularly informed, and was well assured, they were attested by the oaths of several credible informants) how could the bishop make good that part of his solemn appeal to the great God of truth, that (in relation to this matter) he hath as fully, and freely, told the truth, as he was able, upon his best inquiry, to find it out?

The bishop saith, That, 'I talked of the 'matter (meaning the proofs relating to my 'lord's being murdered) so publicly that I was taken up for spreading false news, to alienate 'the people's hearts from the king; and that I 'was tried upon it.'

Remarks. But the bishop was credibly informed, not from me only, but by what was proved at

my trial, and before the Lords' Committees, That the Thursday next after my lord's death, I waited on the then secretary of state, with the substance of what could be sworn, by the beforementioned boy and his mother, in relation to the boy's seeing a razor thrown out of my lord's chamber window. And that the secretary ordered me to attend the then next morning with those two informants. And that I did then attend accordingly, and the secretary being informed (when with the king in council) that I did attend with some witnesses, pursuant to his lordship's order, that I was immediately taken into custody, by one of the king's messengers, before either I myself, or either of those informants (by me then brought to Whitehall) were examined. And after examination, I was obliged to give bonds, with good sureties, in two thousand pounds, to appear the then next term.

So that the bishop was well informed, that I was not then taken up, for talking of this matter; but for obeying the secretary's order, and for bringing witnesses to prove, that a bloody razor was thrown out of my lord's chamber window, before his death was known to any out of that House.

The bishop also knew (from my printed Trial) that it was not then proved against me, that I ever said that my lord of Essex was murdered, or that I did ever say any thing, reflective upon the then government relating thereunto.

So that the bishop was very well informed, from what was sworn, at, and after my trial, that I was not taken up and prosecuted for talking of that matter, and spreading false news, (which the bishop hath asserted) but for producing those witnesses, whose information tended to prove, that my lord of Essex, (one of the two greatest benefactors which the bishop ever had) was most treacherously and barbarously murdered. —How then could the bishop call the great God of truth to witness, that he did believe, I was taken up and prosecuted for talking of this matter, and for spreading false news, when he had read, what was (as above) sworn, in proof of the contrary thereunto.

I have now concluded the Remarks I have thought fit (at present) to make upon what the bishop writ, in relation to the earl of Essex's imprisonment and death. And I shall now make some few reflections upon what one Mr. Monstephens swore at my trial. This Mr. Monstephens was under-secretary to the old earl of Sunderland, when my lord of Essex died. And upon Thursday morning next after my lord of Essex's death, I went alone to the lord Sunderland's office, with the substance of what the young Edwards and his mother could swear, (relating to throwing the bloody razor out of my lord's chamber-window) intending to have shewn the same to his lordship. But my lord not being then at his office, Mr. Monstephens then told me, that my best time to speak with his lordship, would be about four o'clock that afternoon, when I did again go alone, the second time, to that office, where I did again speak with Mr. Monstephens, who told me that my lord Sunderland was then waiting upon prince George of Denmark, at the duchess of Portsmouth's lodgings, and that I had best wait there, and deliver those papers to my lord—I told Mr. Monstephens I neither knew my lord Sunderland's person, nor the duchess of Portsmouth's lodgings.

Whereupon Mr. Monstephens told me, that he would go with me, and shew me those lodgings, and speak to his lordship concerning me. And Mr. Monstephens accordingly went with me to those lodgings, and as my lord Sunderland was passing by us, Mr. Monstephens told his lordship I had some papers to give him.—Whereupon I gave his honour the two before-mentioned informations, of the boy and his mother. My lord Sunderland commanded me to attend him the then next morning, and to bring those informants with me. And the next morning, I did attend with the boy and his sister, who could prove what the mother therein could testify, and the mother was sick. And this was the first time that Mr. Monstephens saw either the boy or his sister with me: and my lord being then in the council with the king and duke of York, and many more lords; and his lordship being informed that I did attend pursuant to his lordship's order, I was thereupon taken into custody, before myself, or the boy, or his sister were examined: and what was then and there farther done, relating to me, I have herein before at large related.

But when this Mr. Monstephens (at my Trial) was sworn, he did deny that he saw me at the duchess of Portsmouth's lodgings, on the Thursday evening before mentioned. And when I then asked him whether I was not with him, on the Thursday morning, before I brought the boy or his sister: he replied 'no, I did not 'then see you there.'

I did then desire to know of Mr. Monstephens whether he could be positive in that? Whereupon Mr. Monstephens again replied, 'yes, I will take my oath again of it.' (Braddon's Trial, p. 1156, of this volume.) Whereas in fact, I never brought the boy and his sister until the Friday morning, and that was the first time Mr. Monstephens ever saw either of them with me; though (as before) he did thrice (in effect) swear contrary thereunto.

Note. After my trial I was credibly informed that this Mr. Monstephens brought (in his pocket) to my trial, that very razor, wherewith he pretended my lord of Essex cut his own throat. And he would then have produced the same, had it been called for. And this razor he did often shew, as the pretended instrument of my lord's death; and if in relation to this gentleman's sin, (in thrice denying the truth) and his misfortune, we might argue from sins to punishments, his death was very remarkable. For some years after the Revolution he cut his own throat with a razor.

But whether with the very same razor (which he had kept, and often shewn as the pretended instrument of my lord's death) I cannot say: but of this I was very well assured, that this very gentleman did often, in Newgate, visit Holland, (before-mentioned as one of my lord's assassinates) when under condemnation for a robbery, and then many times brought him money, and great assurances of a pardon, which was soon after obtained. And I have good reason to believe, that this Mr. Monstephens had received a credible information, that this very Holland was the man, who (with the assistance of two other bravoes) cut my lord's throat with a large knife, and consequently Mr. Monstephens did not believe that the razor, by him kept and shewn, was the instrument of my lord's death.

I shall now give the reason wherefore the House of Lords came to no Resolution, as to the manner of the lord of Essex's death. And I must here beg leave to repeat how, and when, those Examinations and Informations, taken by the Secret Committee, were brought before the House of Lords, and what order that House then made, relating thereunto.

The 5th of February, 1688-9, The four under-written lords were appointed to be a close Committee, to inquire into the death of the earl of Essex, (viz.) Earl of Bedford, earl of Devonshire, lord Mordant and lord Delamere, whose lordships were to meet when, and where, and as often, as they pleased.

Before this Secret Committee there have been examined about 60 persons; and some of those witnesses several times attended, when other occasions prevented the meeting of three of their lordships, without which, they could not act as a Committee: The then Solicitor General, (Somers, afterwards Lord Chancellor) and major Wildman (then General Post-Master) were several times present with this Committee, and permitted to ask those witnesses what questions they pleased, in order to the more full information to their lordships.

From the 5th of February, 1688-9, to the middle of May then following, I believe their lordships appointed above thirty meetings; and after they had examined above 40 persons, relating to my lord's death, the duke of Devonshire, being chairman, delivered those examinations, and informations to the said sir John Somers, and major Wildman, and desired them to draw the matter up in the form of a report, with proper references to each examination and information, wherein the matter of the report was more fully contained.

Major Wildman desired sir John Somers, that he (the major) might draw a rough draught of the Report, and he would then send the same to sir John Somers for his consideration and correction. But soon after the major thus received those informations, he was seized with a violent fit of the gout, which (for the most part) confined him to his bed until the 22d of that May. And in that month of May the king commissioned the duke of Devon, the earl of Monmouth and the lord Delamere, with Mr. Wharton, (afterwards lord Wharton) to go down into the north, and there to regulate that part of the army which had there mutined.—The earl of Monmouth, the lord Delamere and Mr. Wharton, (went upon that occasion) out of town before the 22d of that May, and upon that morning my lord Devonshire sent me, from Bedford House in the Strand, to major Wildman and sir John Somers for that report, and for all those informations and examinations, which had been taken by the Committee.

When I came to major Wildman, (at the Post-Office) I found him ill in bed, and in great pain with the gout. The major told me, how he had been (with the gout) prevented, from drawing up that report.—Upon my return to Bedford house I did acquaint the duke of Devonshire with what the major desired, and the reason thereof.—But the duke of Devonshire then declared, that he had promised several lords, that, before he went into the north to regulate the army, he would bring those examinations and informations into the House, and therefore he would perform such his promise, and bring them into the House, without the form of a report in relation thereunto.—And thereupon sent me the second time to major Wildman, for those informations and examination; which were delivered to major Wildman, without being put into that order, wherein they ought to have been read.—And it being near two of the clock when I brought them to Bedford House, and the duke of Devonshire then in great haste to go to the House of Lords, he carried them into the House, and delivered them to Mr. Walker, the deputy clerk of that House, put up in that disorder, wherein major Wildman delivered them to me. And there being above forty of those informations and examinations, all which could not, that afternoon, be read and well considered by the House, therefore the House deferred the reading of them until the then next day.—And the then next morning betimes my lord Devonshire took his journey into the north, upon the commission aforesaid. On the 23d of May, 1689, those informations and examinations, wherein there was great variety of matter, were read in the House of Lords, and but one, of the four Lords of Committee, then in the House, (viz.) the old duke of Bedford, who was then about 80 years of age.—And those informations and examinations were read in no proper order, (viz.) Those which related to one matter, were not all read, before some others were read, which had no relation to the matter of the immediately preceding informations.—And for as much as none could speak so regularly to the several subject matters in those informations and examinations respectively contained, as those Lords Committees, who were then out of the House, therefore the consideration of that business was suspended, until the lord steward, (the duke of Devonshire) the earl of Monmouth, and the lord Delamere should return out of the country. And this appears

more fully, by the following Order of that House, (viz.)

Die Jovis, 23 Maii, 1689.

'After reading several papers and depositions relating to the death of the late earl of 'Essex. It is ordered by the Lords spiritual 'and temporal in parliament assembled, that 'the consideration of this business shall be suspended until the return of the lord steward, the 'earl of Monmouth, and the lord Delamere, 'who were of the committee before whom they 'were made, and who are now in the country 'in his majesty's services. And it is farther 'ordered, that the said depositions and papers 'shall be sealed up, and kept by the clerk of 'the parliament in the mean time.

'JOHN BROWNE, Cl. Parl.'

Those Depositions and Examinations lay sealed up with the clerk of the parliament, until the then next sessions, and upon the 26th of October then next following, the lords of this secret committee moved for reviving that committee, which the House revived by the following Order:

Die Sabbatis, 26 Octobris, 1689.

'Ordered by the Lords spiritual and temporal in parliament assembled, That the committee appointed on the 5th day of February, 'to take informations concerning the death of 'the late earl of Essex, be, and is hereby revived, to continue and sit as before.

'JOHN BROWNE, Cl. Parl.'*

Whereupon, the before-mentioned Depositions, and other papers, which were then sealed up, and in the clerk's custody, were redelivered to the chairman of this committee, and several other persons were examined by those Lords committees, who had many more meetings before the beginning of January then following, about which time their lordships finished their inquiries under this last mentioned order: And then my lord Delamere was resolved to draw up the Report himself, and to present the same to the rest of those Lords' committees for their correction and approbation. But before lord Delamere had finished that intended Report, that parliament was prorogued, and the 6th of February then following dissolved, and consequently all farther proceedings hereupon, thereby stopped.

So that, in fact, there never was any regular Report made by those Lords of that secret committee, nor did the House of Lords, on the before-mentioned 23rd of May, any farther consider those depositions and papers relating to that matter, than to order, That the consideration of that business should be suspended, till three of those four Lords' committees should return out of the country, where they were then in his majesty's service. Wherefore the House of Lords could come to no resolution, as to the manner of my lord Essex's death, until their lordships had considered, what evidence had been given before the coroner, to prove the pretended self-murder, and what evidence there had been produced before the secret committee, that his lordship was treacherously and barbarously murdered. And many of those informations and examinations, were taken by this secret committee, after the 26th of October, 1689, but by that committee, by reason of the before-mentioned prorogation and dissolution, were never brought into the House of Lords.

And for the reasons herein-before mentioned, the House of Lords did never fully consider the evidence, for and against the self-murder, and so their lordships could not come to any Resolution, as to their opinion, of the true manner of the death, of that great, but unfortunate lord, Arthur earl of Essex, in 1683.

Objection. It may be objected, That if their lordships, of this Secret Committee, had believed, that those Informations and Examinations by them taken, relating to my lord's death, had proved, that the earl of Essex was murdered by others. That then those Lords committees would have moved the House of Lords, in 1690, when the new parliament (after the dissolution of the Convention Parliament) first met, That the said close committee might be revived, in order to their making a Report, upon what informations and examinations had been, as before, taken relating to this matter, Because the proof of that murder, upon the late king James, when duke of York, would have been of singular service to the Revolution interest. And for as much as no such motion was made by those Lords committees, in any

* It appears by the Lords' Journal, that immediately on the meeting of the Convention, in January 1689, consideration was had of the death of lord Essex: and the account given in the text, so far as it extends, agrees with the entries in the Journals. The latest day on which I have found any such entries, is the 28th of November, in the same year.

It was then ordered by the House, 'That 'such persons as are now under bail by recognizance, concerning the death of the late earl 'of Essex, shall be, by the Court of King's-'bench, bound over to appear the first day of 'Hilary Term next.' And, 'That the Depositions concerning the death of the late earl 'of Essex, now sealed up, and in the custody 'of the clerk of the parliaments, shall be delivered to the Lords committees appointed to 'examine the said business.'

It seems likely, that no farther proceedings in the House of Lords, at least, were had in the matter; and I conjecture, that the Depositions were never returned to the clerk of the parliaments. Through the very obliging interposition of the present earl of Essex, a most diligent search has just now (Oct. 1810) been made in the Parliament Office, but none of the papers relative to the proceedings had in the Committee, on the matter of the earl of Essex's death, appear to be there extant. It probably would not be easy to ascertain what became of them.

sessions, after the dissolution of the Convention Parliament. It argues to those objectors, That the Lords of that secret committee, did not believe, that all the proofs, by them taken, were sufficient to incline the House of Lords to believe, that Arthur earl of Essex was murdered by others.

Answ. I do confess that the Lords Committees did not move in that new parliament, in 1690, to revive this Committee, in order to their making a report, upon the proofs by them taken, relating to that lord's death. And the true reason thereof I could not learn, but this I believe, that no prosecution of any murder, in the British annals recorded, ever met with such opposition, as the prosecution of this murder hath received. And

First, From all the Jacobite interest, as well protestant as papist. And how great that interest ever since the Revolution, hath been; the many treasonable conspiracies, and open Rebellions have sufficiently proved.

Secondly, King James the second, being father to the late queen Mary and queen Anne, it is natural to suppose, that neither of those two queens, would have had their father stigmatized, with that most infamous character of being a murderer, and in more instances than one And whether king William, out of respect to his queen, might any ways hinder the fixing such an infamy upon his queen's father, I cannot tell.—But this I sensibly felt to be true, viz. That queen Anne, upon her first coming to the crown, struck me out of the civil list: Because, as her majesty then said, I had thrown blood in her father's face.

Thirdly, The countess dowager of Essex (by the influence of bishop Burnet) did desire the Lords Committees in 1689, not to proceed any farther in that inquiry, for the countess, by the bishop, did then endeavour to persuade the Lords Committees, and several other lords, that my lord of Essex murdered himself.

Fourthly, There was a certain great man charged, as ordering to this murder, who had been the main instrument (in the hand of Providence) of bringing about the Revolution; and by this very gentleman's councils, king William was, for some years, very much influenced. What interest therefore that great man had with king William, or with any other persons whatsoever, was applied, to hinder the prosecution of this murder. And,

Lastly, The late bishop Burnet himself, was not only the principal cause of hindering the countess from engaging in this prosecution; but that prelate did otherwise endeavour to blast the credit of this inquiry, by sometimes representing me, (as in his late History) an enthusiastical man, and therefore no regard was to be had, to what I said or did in relation to that inquiry. At other times, that bishop did represent me a man of a very strong imagination, (a soft character of a madman) from whence I was easify inclined to take up the belief of things, upon such evidence, as was not sufficient to prove the things to be. But when I was so possessed of imaginary beings, there was no convincing me, by any arguments, of their non-existences.

But whether that bishop's belief of the self-murder by the earl of Essex, or my belief of that lord's being barbarously murdered by others, be the effect of proper evidence, or strong imagination, must be left to every judicious reader, who shall have read and well considered, all the proofs, *pro* and *con*, and herein before-mentioned, relating to that great, but unfortunate lord's death.

I shall now make one reasonable request to all my readers, viz. That they will ground their belief, of the manner of my lord of Essex's death, upon such evidence as to them shall appear rational; and not be implicitly influenced to believe it to be, either self-murder, or a barbarous murder committed upon him, by hired assassinates, because such or such great men did believe it to be so, though they themselves know not, what reasons or proofs those great persons had for such their beliefs. All men know, that the believing of a lie, doth not make it a truth: nor doth the disbelieving a truth, make it a falshood.

All Protestants justly condemn the church of Rome for imposing an implicit faith in their church. But an implicit belief of a fact, contrary to what is credibly proved, because some men believe the fact to be otherwise than what is sworn, but give no reasons for such their belief, is more ridiculous, though less dangerous, than an implicit faith in the Roman church. Because all proofs for matters of fact, are more easily to be comprehended, by men of ordinary capacities, than some evidences, brought to prove some particular points in controversy, between Christian churches.

Our lives and fortunes are now tried by jurors; and those judges of facts are sworn, "well and truly to try" (the matter then in issue) "according to evidence." Now that jury would justly be condemned, who should find an issue, contrary to plain credible evidence, only because some great men did believe the fact to be otherwise than what it was proved to be. If men will therefore become judges of the manner of this noble lord's death, let their judgments impartially weigh all the proofs, that are herein before mentioned, for and against the self-murder. And let that side turn the scale, which shall have produced the strongest evidence, relating to the matter in question.

And I do hereby solemnly assure the reader that I have herein printed nothing material, in proof of my lord's being barbarously murdered, but what I printed and published about 34 years since, (viz.) in 1690, and dedicated to the same four lords committees. And I printed 2,000 of these books, and about 10,000 abstracts thereof, but could never meet with any printed answer to the proofs then brought for that barbarous murder. And that such a book was then printed and published, I do purpose to give sufficient proof thereof, by leaving three

of those books at three several coffee-houses, one at a coffee-house near Charing-Cross, another at a coffee-house near the Temple, and a third near the Royal-Exchange, of which respective places, notice shall be given in some public paper. And with each book such an index as shall immediately direct to the thing inquired for.

I shall now give a brief relation, of what was supposed to be one of the principal occasions, of (hastening) the poisoning of king Charles the second, viz.

Some short time before the death of that unhappy prince, there was a pamphlet writ and printed in Holland, entitled, "An inquiry into, and detection of the barbarous murder of the late earl of Essex." And many hundreds of these were brought to England.

In this pamphlet, there were many arguments given to prove that murder. And the author did therein humbly beseech his then majesty, that he would be graciously pleased to give his royal assurance of a pardon to him, who should prove that murder. And then the duke of York should be proved to have been the principal author, and rewarder thereof.

Several hundred of those books were, one night, about twenty days before king Charles the second's death, dispersed by some gentlemen, and for the most part, laid at the doors of privy counsellors, and of other noblemen, and justices of the peace.

One of those books was then conveyed to the king, who read the same, and then sent for the lord Allington, then constable of the Tower, and charged his lordship to read and consider the same, and in a short time to return the book, and to give his majesty his opinion thereof, and also what his lordship thought, as to the manner of the earl of Essex's death.

My lord Allington lent this book to sir Thomas Rowe, but charged him to return it the then next day, because his lordship did intend then to restore that book to the king.

Sir Thomas read, and returned the book accordingly; and shortly after waited again upon the lord Allington, who did then inform sir Thomas, that he had again been with his majesty, and returned that book, and that thereupon the king asked my lord, whether he had read, and considered the same? And his lordship answered, that, in humble obedience to his majesty's commands, he had read, and considered the contents thereof. Whereupon the king then commanded my lord to give his judgment, as to the death of the earl of Essex. But his lordship did then humbly beseech his majesty to excuse him from giving any judgment therein. Whereupon the king then said, I command you to deal very plainly and sincerely with me in relation thereunto; Sir, Replied my lord, if your majesty commands me to deal therein sincerely with your majesty, I must then say, That I am of opinion, that unfortunate lord had very foul play. Then (if I live) said the king, I will make a very strict inquiry into that matter. And I command you to come to me to morrow.

As soon as the lord Allington withdrew, the duke of York came in, whilst the king had the book in his hand. And (as the king the next day informed my lord) the duke asked his majesty, who had brought him that villainous lying pamphlet? But the king then said, that he did not believe it to be a lying pamphlet, and that his majesty was resolved to make a strict inquiry into the earl of Essex's death. And his highness should go abroad before that inquisition was made. The duke thereupon declared, that "He had already travelled too much."

The substance of what is above-mentioned, relating to what past, between king Charles the second, and the lord Allington, I had from sir Thomas Rowe, soon after the Revolution. And some few days after that discourse between the king and duke, the king and the lord Allington, were seized with such an illness, as was generally thought to be the effect of poison.

And the lord Allington died, about three days before the king, and his majesty died the 6th day of February, 1684-5. And so by that king's being forced to travel too soon into the other world, king James delayed his own travels in this, until the consciousness of his own guilt, and the just desertion of his own troops, forced him to become a fugitive, and a pensioner, to that great monarch, whose arbitrary government, he liked much better, than to be circumscribed by those good laws, which hindered him from ruining both our Church and State.

304. The Trial* of Sir SAMUEL BARNARDISTON, bart. at Nisi Prius, at the Guildhall of London, for a High Misdemeanor: 36 CHARLES II. A. D. 1684. [To which are added, Proceedings upon a Motion in Arrest of Judgment in the said Case: now first printed from the MS. of Sir William Williams, communicated for this Work (A. D. 1811) by his Descendant, Mr. Charles Watkin Williams Wynn.]

THERE being in Hilary term last, an Information in the Court of King's-bench, preferred by his majesty's Attorney General, against sir Samuel Barnardiston, for a very great misdemeanor; upon oath made that he was so extremely indisposed, that he could not appear in person without danger of his life: the Court were pleased to respite his recognizance, (which he, by order of the lords of his majesty's most honourable privy council, entered into the last vacation to appear in this Court the first day of this term,) and to allow him the liberty of pleading to the Information by Attorney, which he did. And Thursday, the 11th of February 1684, being the session of Nisi Prius, after the term holden for the city of London and county of the same, was appointed for the trial of this cause, and accordingly then the same came on, and was tried before the right hon. sir George Jeffreys, knt. and bart. lord chief justice of his majesty's Court of King's-bench, in this manner.

Clerk. Call away, Cryer.

Cryer. You good men of Nisi Prius, summoned to appear here this day between our sovereign lord the king, and sir Samuel Barnardiston, bart. answer to your names and save your issues.

Cl. Thomas Vernon and his fellows. 'Vous 'avez plein Inquest.' Call the defendant sir Samuel Barnardiston.

Cryer. Sir Samuel Barnardiston, come forth, or this inquest shall be taken by your default.

Mr. *Williams.* He appears.

Clerk. Gardez vostres challenges. Swear Thomas Vernon.

Cr. You shall well and truly try this issue, between our sovereign lord the king, and sir Samuel Barnardiston, according to your evidence. So help you God.

Cl. Percival Gilburn: who was sworn, and so the rest.

The names of the twelve were these: Thomas Vernon,* Percival Gilburn, Edward Bovery, William Withers, sen. James Wood, Robert Masters, Samuel Newton, George Torriano, Kenelm Smith, Thomas Goddard, Thomas Amy and Richard Blackburn. Then they were counted, and proclamation made for information in usual manner.

Mr. *Poultney.* May it please your Lordship, and you Gentlemen of the Jury; this cause is between the king and sir Samuel Barnardiston, and it is upon an Information exhibited by Mr. Attorney General, wherein he sets forth, That there having been lately a Horrid Plot discovered, (as appears by the convictions of those that have suffered justly for it, and by the evidence that has been given of it, has been made so apparent, that I do not question, but that no man but who either has a hand in it, or else bears a good will to it, doth at all scruple the belief of it) sir Samuel Barnardiston, the defendant, intending to scandalize and vilify the Evidence, wrote a Letter wherein are contained these sentences.

'The return of the duke of Monmouth to 'Whitehall, and his being received into extra-'ordinary favour of his majesty, hath made a 'strange alteration of affairs at Court; for 'those that before spake of him very indecently, 'now court, cringe and creep to him.' His 'grace complained to the king of the scanda-'lous misrepresentation that was made of him 'in the Monday's Gazette, upon which the 'Gazetter was called to account for it, who al-'ledged for himself, that a person of great 'quality sent him in writing the words therein 'recited, commanding him to put them in the

* From a pamphlet, entitled, "The Trial and Conviction of sir Samuel Barnardiston, bt. for High Misdemeanor, at the Session of Nisi Prius, holden at Guildhall, London, for his Majesty's Court of King's Bench, before the Right Hon. sir George Jeffreys, knt. and bart. Lord Chief Justice of England, on Thursday, Feb. 14, 1684."

'I do appoint Benjamin Tooke to print the 'Trial of sir Samuel Barnardiston, bart. and 'order that no other person presume to print 'the same. GEO. JEFFREYS.'

* Lady Rachel Russell, in a letter dated January 31, 1684-5, to Dr. Fitzwilliam, says, "I heard this day of a kinsman that is gone: a few years ago, I should have had a more concerned sense for sir Thomas Vernon: his unfitness, as I doubt, I lament indeed." The editor of lady Russell's Letters inserts, in a Note to this passage, the following mention of sir Thomas Vernon made in the "Display of Tyranny." "Sir Thomas Vernon on the jury against sir Samuel Barnardiston, knighted for his service in it, and then made foreman to convict Oates of perjury." See in this Collection the Trial of Oates, May 9, 1685.

'Gazette. Yesterday being the last day of the 'term, all the prisoners that were in the Tower, 'upon the late Sham Protestant Plot, were 'discharged upon bail. Mr. Braddon who 'prosecuted the murder of the earl of Essex, 'the Information put in against him in the 'King's-bench, by Mr. Attorney for a pre'tended subornation, &c. was not prosecuted, 'and his bail was discharged. And the pass'ing sentence upon the author of 'Julian the 'Apostate,' and the printer of the late lord 'Russell's Speech, was passed over with si'lence. Great applications are made to his 'majesty for the pardoning Mr. Sidney in the 'Tower; which is believed will be attained, 'and that he will be banished. The lord 'Howard appears despicable in the eyes of all 'men; he is under guard at Whitehall, and it 'is believed will be sent to the Tower, for that 'the duke of Monmouth will accuse him con'cerning the testimony he hath given, and the 'Papists and high Tories are quite down in the 'mouth, their pride is abated, themselves and 'their Plot confounded, but their malice is not 'assuaged. It is generally said the earl of 'Essex was murdered. The brave lord Russell 'is afresh lamented. The Plot is lost here, 'except you in the country can find it out 'amongst the addressers and abhorrers. This 'sudden turn is an amazement to all men, and 'must produce some strange events, which a 'little time will shew.'

And then he goes on further, and says, in another Letter, these words:

'I am to answer yours of the 27th and 29th 'past, and truly I cannot but with great sorrow 'lament the loss of our good friend, honest Mr. 'John Wright, but with patience we must 'submit to the Almighty, who can as well raise 'up instruments to do his work, as change 'hearts, of which we have so great an instance 'in the business of the duke of Monmouth, 'that no age or history can parallel. I am 'now thoroughly satisfied, that what was 'printed in the Monday's Gazette is utterly 'false, and you will see it publicly declared so 'shortly. The king is never pleased but when 'he is with him, hath commanded all the privy'council to wait upon him, and happy is he 'that hath most of his favour. His pardon 'was sealed and delivered to him last Wednes'day. It is said, he will be restored to be 'master of the horse, and be called into the 'council-table, and to all his other places, and 'it is reported he will be made captain-general 'of all the forces, and lord high-admiral, &c. 'He treats all his old friends that daily visit 'him with great civilities, they are all satisfied 'with his integrity; and if God spares his life, 'I doubt not but he will be an instrument of 'much good to the king and kingdom. He 'said publicly, That he knew my lord Russell 'was as loyal a subject as any in England, and 'that his majesty believed the same now. I 'intend shortly to wait on him myself. It 'would make you laugh to see how strangel 'our high Tories and 'countenances speak it. Were my Shesorary 'to be moved for now, it would be readily 'granted. Sir George is grown very humble. 'It is said Mr. Sidney is reprieved for forty 'days, which bodes well.'

And then, gentlemen, he goes on further; and in a third Letter says,

'The late change here in public affairs is so 'great and strange, that we are like men in a 'dream, can hardly believe what we see, and 'fear we are not fit for so great a mercy as the 'present juncture seems to promise. The 'Sham Protestant-Plot is quite lost and con'founded. The earl of Mackensfield is bring'ing actions of Scandalis Magnatum, against 'all the grand jury-men that indicted him at 'last assizes.'

L. C. J. (Sir George Jefferies.) This is the only true thing in the whole.

[Mr. Poultney reads.]—'And the several 'gentlemen that were indicted in Cheshire and 'Northamptonshire will bring their several 'action at law against them.'

And, gentlemen, then in a fourth Letter are contained these expressions:

'Contrary to all men's expectations, a war'rant is signed at last for beheading col. Sidney 'at Tower-hill, next Friday. Great endeavour, 'have been used to obtain his pardon, but the 'contrary party have carried it, which much 'dasheth our hopes, but God still governs.'

Gentlemen, all this, the Information * says,

* The Latin Indictment runs thus:

Midd' ss. 'Quod cum quædam diabolica et 'proditoria conspiratio et insurrectio diversar' 'seditiosar' et male-disposit' personar' ad Do'minum nostrum Carolum secundum nunc 'Regem Angl' murdrand' et interficiend', et 'leges et gubernationem hujus regn' Angl', ut 'per leges modo constitut' et stabilit', subver'tend' detect' fuisset; cumque etiam quidam 'Willielmus Russel Arm', et diversæ al' per'son' de conspiratione et proditione ill' per de'bitum legis process' fuissent triat', convict', 'et attinct', et pro eisdem execut'. Ac quidam 'Algernon Sidney Arm', de conspiratione et 'proditione ill' existebat similiter triat' et con'vict': Cumque super triation' præd' W. R. & 'A. S. Willielmus Dominus Howard de Es'crick, testis ex parte dict' Dom' Regis ad 'prodition' et conspiration' præd' proband' 'product' fuisset, quidam Samuel Barnardiston 'nuper de London Bar', existens homo sedi'tiosus et pernitiosus, et turbulentæ et inquietæ 'animæ et conversation', falso, illicite, mali'tiose, inequit' et seditiose machinan' et prac'tican' et intendens dict' Dom' Regem nunc, 'et gubernationem et regimen sua, necnon 'publicam administrat' justic' in hoc regno 'Angl' in odium, scandalum, et vilipendium 'cum subdit' suis inducere et inferre, ac dis'cordiam et seditionem int' dictum Dominum 'Regem, et ligeos subdit' suos, et int' eosdem 'subdit' movere, incitare et ponere, necnon 'pacem ejusdem Dom' Regis, et tranquillitat' 'hujus regn' Angl' inquietare, molestare, et

he has done against the peace of the king, his crown and dignity. To this he has Not Guilty. We will call our witnesses, and if we prove it, we question not but you will find him Guilty.

Mr. *Recorder.* (Sir Thomas Jenner) May it please your lordship, and you gentlemen of the jury; I am of counsel for the king in this cause. Upon the opening of these Letters to you, you cannot but wonder much more than

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'perturbare, et conspiration' et prodition' præd' concelare, et evident' pro dicto Rege in ea parte vilificare, scandalizare, et deterrere, et ad nequissimas, diabolicas, et nefandissimas machination', practication', et intentiones suas præd' perimplend', perficiend', et ad effectum redigend', 20 die Septembr', anno regn' Dom' Caroli secundi nunc Regis Angl', &c. 35 apud paroch' sancti Michaelis Cornhill, London, vi et armis, &c. falso, illicite, injuste, malitiose, corrupte, et seditiose fecit, composuit, et scripsit, et fieri, componi, scribi, et publicari causavit, quoddam falsum, scandalosum, et seditiosum libellum, geren' dat' 29 die Novembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ falsæ, fictæ, scandalosæ, libellosæ, malitiosæ, et seditiosæ sententiæ Anglican' sequen', videlicet, Sir; The return of the duke of Monmouth to Whitehall, and his being received into extraordinary favour of his majesty, hath made a strange alteration of affairs at court; for those that before spake of him very indecently, now court, cringe, and creep to him. His grace complained to the king of the scandalous misrepresentation that was made of him in the Monday's Gazette, upon which the Gazetteer was called to an account for it, who alledged for himself, that a person of great quality sent him in writing the words therein recited, commanding him to put them in the Gazette. Yesterday being the last day of the term, all the prisoners that were in the Tower upon the late sham Presbyterian Plot (conspiration' et prodition' præd' innuendo) were discharged upon bail; Mr. Braddon, who prosecuted the murder of the earl of Essex, the information put in against him in the King's-bench by Mr. Attorney, for a pretended subornation, &c. was not prosecuted, and his bail was discharged; and the passing sentence upon the author of Julian the Apostate, and the printer of the late lord Russell's speech, was passed over with silence. Great applications are made to his majesty for his pardoning Mr. Sidney in the Tower (dictum Algernon Sidney, ut præfertur, convict' innuendo) which is believed will be attained, and that he will be banished. The lord Howard (dict' Willielmum Howard innuendo) appears despiseable in the eyes of all men; he is under a guard at Whitehall, and (as believed) will be sent to the Tower, for that the duke of Monmouth (Jacobum Ducem Monmouth innuendo) will accuse him concerning the testimony he hath given, &c. evident' super triation' et conviction' præd' W. R. & A. S. per eundem Dominum Howard, ut præfertur, dat' innuendo) the Papists and high Tories are quite down in the mouth; their pride is abated, themselves and their plot confounded, but their malice is not assuaged. It is generally said the earl of Essex was murdered: the brave lord Russel (dict' Willielmum Russel, pro conspiration' præd', ut præfertur, convict', attinct', et execut' innuendo) is afresh lamented. The plot (conspiration' et prodition' præd' innuendo) is lost here, except you in the country can find it out amongst the addressers and abhorrers. This sudden turn is an amazement to all men, and must produce some strange event, which a little time will shew. Ac ad nequissimas et nefandissimas machination' et intention' suas præd' perimplend', perficiend', et ad effectum redigend', idem S. B. Bar' postea (scil', dict' 20 die Decembris, anno regn' dict' Dom' Regis nunc 35 suprad') apud paroch' sancti Michaelis Cornhill London præd', false, illicite, injuste, malitiose, corrupte, et seditiose fecit, composuit, et scripsit, et fieri, componi, scribi, et publicari causavit, quoddam al' falsum, scandalosum, libellosum, et seditiosum libellum, geren' dat' primo die Decembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ falsæ, fictæ, scandalosæ, malitiosæ, libellosæ, et seditiosæ sententiæ Anglican' sequen', videlicet, Dear sir, I am to answer you of 27th and 29th past: and truly I cannot but with great sorrow lament the loss of our good friend, honest sir John Wright; but with patience we must submit to the Almighty, who can as well raise up instruments to do his work, as change hearts, of which we have so great an instance in the times of the duke of Monmouth (præd' J. Duc' M. innuendo) that no age or history can parallel. I am now thoroughly satisfied, that what was printed in the Monday's Gazette is utterly false, and you will see it so declared shortly. The king is never pleased but when he is with him, hath commanded all the privy council to wait on him, and happy is he that hath most of his favour; his pardon was sealed and delivered him last Wednesday; it is said, he will be restored to be master of the horse, and be called into the council table, and to all his other places; and it is reported he will be made captain-general of all the forces, and lord high admiral; and he treats all his old friends, that daily visit him, with great civilities; they are all satisfied with his integrity, and, if God spares his life, doubt not but he will be an instrument of much good to the king and kingdom: he said publicly, that he knew my lord Russel (dict' Willielm' Russel pro conspiration' et prodition' præd' conviet', attinct', et execut' innuendo) was as loyal a subject as any in England, and that his majesty believed the same; now I intend shortly to wait on him myself. It would make you laugh to see how strangely our

he does that wrote them. His matter of wonder was one way, and I suppose your matter of wonder is another way, that a man, such an one as he is, should have that confidence to write such letters as these are. Gentlemen, I do not doubt but you observe in the series of these Letters, how he hath travelled through all the transactions of this horrid conspiracy, that was of late contrived against the life of the king, and the life of his royal highness, and for the destruction of the government; and how he does endeavour to turn it all into ridicule, and to magnify the men that have come to public justice for being concerned in that horrid conspiracy, as being very brave men. The brave lord Russel, he is lamented as a brave man lost; the earl of Essex he forsooth was murdered; and Mr. Braddon, who prosecuted that murder, he is a brave man, whom I suppose some of you have heard of, and what is become of him, how he is convicted of one of the most notorious facts that ever was acted by man in any civil government; which was, that Braddon should go up and down to get witnesses to make it appear to the world, as though somebody had murdered that earl. Thus you see he goes through the conspiracy from one thing to another, and calls it a Sham Protestant Plot, and all to ridicule the discovery, which by these very Letters you may easily be satisfied of the reality and extent of. You see how he magnifies his Julian, but he likewise is come to condign punishment for that most pernicious and scandalous libel. In the next places he comes to the duke of Monmouth, and tells you what a brave man they have in him to be their captain-general, and he did not doubt but to see him come to it; and sets forth, that he has denied all the plot, and how he doth persist in that denial. And this gentleman has raised his confidence in these Letters to that degree, that I think any man, that has lived any time in this nation, cannot but wonder, that ever there should be such an impudent action committed in it. Gentlemen, we shall call our witnesses and prove it positively upon him, that these Letters he did write, and then I suppose he will give an account how he came to write them.

Mr. *Herbert*. May it please your lordship, and you gentlemen of the jury, I have but one word which I desire to observe; for the opening of the case, and a right understanding of the matter will have a great influence upon the proofs. And I shall not insist upon any thing that has been opened at large out of the Letters; but one thing I would observe to you, and that is out of the last Letter. 'Great endeavours 'have been used to obtain his pardon, but the 'contrary party have carried it, which much 'dasheth our hopes.' So it seems by this that the faction, the party, have their hopes still, and it seems likewise the writer of these Letters hath a very great share in them. We have, gentlemen, nothing to do here before you, but

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'high Tories and clergy are mortified, their 'countenances speak it; were my lord S—— 'to be moved for now, it would be readily 'granted, sir George (Georgium Jeffreys Mil' 'et Bar', Capital' Justic' Dom' Regis ad placita in cur' ipsius Dom' Regis coram ipso 'Rege tenend' assign', adtunc et adhuc existen' innuendo) is grown very humble. It is 'said, Mr. Sidney (dictum A. S. innuendo) is 'reprieved for forty days, which bids well. 'Ac ad nequissimas et nefandissimas machination' et intention' suas præd' perimplend', 'perficiend' et ad effectum redigend', idem S. 'B. postea (scilicet, dicto 20 die Decembr', 'anno regn' dict' Dom' Regis nunc 35. suprad', 'apud paroch' sancti Michaelis Cornhill London praed') falso, illicite, injuste, malitiose, 'corrupte, et seditiose fecit, composuit, et 'scripsit, et fieri, componi, et scribi, et publicari causavit, quoddam al' falsum, scandalosum, libellosum, et seditiosum libellum, geren' 'dat' primo die Decembris, anno Dom' 1683, 'in quo quidem libello (inter al') content' fuer' 'hæ falsæ, fictæ, scandalosæ, malitiosæ, libellosæ, et seditiosæ sententiæ Anglican' sequen', 'videl', The late change here in publick affairs is so great and strange, that we are like 'men in a dream, can hardly believe that we 'see, and fear we are not fit for so great a 'mercy as the present juncture so seems to 'promise. The sham Protestant Plot (conspiration' et prodition' præd' innuendo) is quite 'lost and confounded. The earl of Macklesfield is bringing actions of Scandalum Magnatum against all the grand jurymen that indicted him at the last assizes, and the several 'gentlemen that were indicted in Cheshire and 'Northamptonshire will bring their several actions at law against them. Ac ad nequissimas 'et nefandissimas machination' et intention' 'suas præd' ulterius perimplend', perficiend', et 'ad effectum redigend', idem S. B. Bar' 'postea (scilicet, 20 die Decembr', anno regn' 'Dom' Caroli secundi nunc Regis Angl', &c. '35.) apud paroch' sancti Michaelis Cornhill 'London præd', falso, illicite, injuste, corrupte, 'et seditiose fecit, composuit, et scripsit, et 'fieri, componi, scribi, et publicari causavit 'quoddam al' falsum, scandalosum, libellosum, 'et seditiosum libellum, geren' dat' 4 die Decembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ al' falsæ, fictæ, 'scandalosæ, malitiosæ, libellosæ, et seditiosæ 'sententiæ Anglican' sequen', videl' Contrary 'to most men's expectation, a warrant is signed 'at last for beheading Mr. Sidney (dict' Algernon Sidney innuendo) at Tower-hill next Friday: Great endeavours have been used to obtain his pardon, but the contrary party have 'carried it, which much dasheth our hopes: 'but God still governs. Ea intentione, ad 'incitand', movend', et procurand' seditionem, 'malevolent', et discord' int' dict' Dom' Regem, 'et subdit' ipsius Dom' Regis hujus regn' 'Angl', necnon int' ipsos subdit', in malum 'et perniciosum exemplum omn' al' in tali casu 'delinquen', ac contra pacem Dom' Regis nunc, 'coron', et dignitat' suas, &c. Unde, &c.'

to prove that sir Samuel Barnardiston was the author, writer and publisher of the Letters, which contain that which is charged in the information, and that we question not but to prove clearly without contradiction. Call Mr. Blathwaite. [Who was sworn.] Pray give in the Letters. [Which was done.]

Mr. *Recorder*. Pray, Sir, look upon those Letters, and give the court and the jury an account where you had them.

Mr. *Blathwaite*. Gentlemen of the jury, these three Letters sir Samuel Barnardiston, upon the 10th of December, before the king and the lords of the council, did own to be of his hand-writing. I marked them at that instant of time, and I am well assured they are the Letters he owned to be of his hand-writing.

Mr. *Williams*. Did he own them to be of his hand-writing?—*Blathwaite*. Yes.

L. C. J. Did he own them all three?

Blathwaite. Yes, my lord, he did.

Mr. *Williams*. Pray, Sir, who are they directed to?

L. C. J. Mr. Williams, he is informed against for writing, not for superscribing.

Mr. *Williams*. My lord, I ask that question for this reason, he is indicted for writing and publishing, therefore I would know who they are directed to. Did he say they were published by him, or sent to any one?

Blathwaite. He did not deny but that he had published and sent them.

Mr. *Williams*. Did he confess it?

Blathwaite. He did not deny it.

L. C. J. I suppose they on the other side will give an account where they were taken.

Mr. *Herbert*. Yes, my lord. Swear Mr. Atterbury. [Which was done.]

Mr. *Recorder*. Hark you, Mr. Atterbury, do you know any thing of these Letters?

Mr. *Atterbury*. If you please to let me see them, Sir.

Mr. *Recorder*. Shew him them. [Which was done, and he looked upon them, and gave them in again.]

Mr. *Herbert*. Did you hear sir Samuel Barnardiston own them to be his Letters?

Atterbury. My lord and you gentlemen of the jury, I had a warrant from Mr. Secretary Jenkyns, about two months or ten weeks ago, to apprehend sir Samuel Barnardiston, and I did according to order, by virtue of that warrant, apprehend him, and carry him before his majesty. When he was there, those three Letters I had just now in my hand, were then shewn to sir Samuel Barnardiston. I marked them, and know them to be the same: sir Samuel Barnardiston did own he wrote them Letters all three.

L. C. J. Were the superscriptions upon them all, as they are now?

Atterbury. Yes, they were all as they are now.

L. C. J. What say you, Mr. Blathwaite?

Blathwaite. Yes, they were just so, the same superscriptions.

Atterbury. His majesty asked him, Who subscribed them?

L. C. J. Superscribed them, thou meanest, they are not subscribed.

Atterbury. Yes, my lord, superscribed them; and he looked on them again, and said, They were superscribed by one of his servants, and so ordered to be carried to the post-house.

Recorder. Where is Nehemiah Osland?

Juryman. My lord, we would ask the witness, Whether he did own that he sent them to the post-house.

L. C. J. He says, he ordered his man to superscribe them, and so to carry them to the post-house.

Mr. *Williams*. Look you, Mr. Atterbury, Did he say he directed any of his servants to carry them to the post-house, upon your oath?

Atterbury. I am upon my oath, Sir, I say, that he did say, that they were superscribed by some of his servants, he could not say which of his servants it was, and then they were sent to the post-house.

Mr. *Williams*. Pray, Sir, mind and answer my question, Did he say, he directed any of his servants to carry them to the post-house?

L. C. J. Did he take any notice to you, or did you understand by him, that they were sent to the post-house by his consent?

Atterbury. Yes, my lord, I did understand him so.

L. C. J. Did he write these letters to keep them in his pocket, do you think, Mr. Williams?

Mr. *Williams*. I do not know what he designed them for, my lord; nor do I yet know till they are read, what is in them: But I ask him this question, did he say he sent them to the post-house?

Atterbury. With your leave I remember one thing more, my lord; while he was in my house, (for there he was in custody two days or more) talking about these Letters, says he, I wonder how they were taken, they were sent to sir Skippon, or some such name he named.

Recorder. Swear Nehemiah Osland. [Which was done.]

Mr. *Herbert*. Look upon those Letters, Sir. Shew him them. [Which was done.]

L. C. J. Is this man's name Osland?

Recorder. Yes, Nehemiah Osland, Do you know any thing of those superscriptions?

Osland. Two of those superscriptions I writ by his order as his servant.

Recorder. Which are those two? [Then he gave them into the court.]

L. C. J. Can you tell whose hand is the other part?

Osland. I did not see it writ, but the hand is somewhat like sir Samuel Barnardiston's hand.

L. C. J. You believe it to be his hand?

Osland. Yes, I do.

Mr. *Williams* Did you ever see the inside of those Letters that you say you superscribed?

Osland. No, I never saw the inside.

L. C. J. What directions had you about them, after you had superscribed them?

Osland. I had no direction, but to leave them where I used to leave his letters, and that was in a window that sir Samuel Barnardiston always left his letters in, and from thence one of the boys used to carry them to the post-house.

Mr. *Williams.* Sir, Did sir Samuel order you to superscribe those three Letters, and send them to the post-house?

L. C. J. He said he superscribed them by his command, and left them in the place that letters used to be laid that were to go to the post-house.

Recorder. Pray, look upon those Letters again.

L. C. J. Whose hand is the superscription? Is that sir Samuel's too?

Osland. I believe it sir Samuel's hand.

L. C. J. Shew that other Letter to Mr. Blathwaite: What say you to it, Sir?

Blathwaite. Gentlemen of the jury: This is another Letter that was seized and brought before the king and the lords of the council, and this Letter was afterwards owned by Osland, to be writ by him by sir Samuel Barnardiston's order.

L. C. J. Did sir Samuel own this Letter to be his hand-writing too?

Blathwaite. No, he did not, but Osland did own it.

Recorder. My lord, We prove it otherwise to be sir Samuel's Letter, because it is not his hand, but his man's. You, Osland, do you know who writ that Letter?

Osland. I writ it.

Recorder. By whose order?

Osland. I transcribed it out of a copy given me by sir Samuel Barnardiston, as I was his servant.

L. C. J. And did you write the superscription too?

Osland. Yes, I writ the superscription.

L. C. J. In order to what? To go down in the country too?

Osland. In order to go where it was directed, my lord.

L. C. J. Where was that?

Osland. Into Suffolk, to sir Philip Skippon.

L. C. J. This Letter was written at London, was it not?

Osland. In Bishopsgate street, at sir Samuel's house.

Mr. *Williams.* What is your name, Sir?

Osland. My name is Osland.

Mr. *Williams.* Your Christian name?

Osland. Nehemiah.

Mr. *Williams.* Then, Nehemiah Osland, I ask you this question upon your oath, when these Letters were superscribed by you, did you lay them in that window you speak of, or did you give them back again to sir Samuel?

Osland. Sir, I am not so certain as to swear to these particular Letters; but his usual custom was, He would write a letter, and then give it me to copy: his closet-door was near another window, and there he would leave it. If it were but one letter, he would use to say, Direct such a letter to such a person, or such a place, and when it was so directed, I was used to put my letters there, and thence one of the boys came and fetched them to carry them to the post-house. But sometimes he would send me down directly with it away to the post-house, if he had not any other business for me to do.

Mr. *Williams.* But, Sir, mind the question. I ask you again: Did you deliver these Letters, or any of them, back again to sir Samuel Barnardiston, or no?

Osland. I cannot tell for these particular Letters. I tell you what the usual custom was in the house.

Mr. *Williams.* Pray when you had superscribed them, or sir Samuel, what became of them Letters?

Osland. They went to the post-house, as I believe.

Mr. *Williams.* How long have you served sir Samuel Barnardiston?

Osland. Five months.

Mr. *Williams.* Did you serve any body before?—*Osland.* No.

Recorder. Why, do you think he doth not serve him well now, Mr. Williams?

Mr. *Williams.* I know very well what I think of it, Mr. Recorder.

L. C. J. Well, come read them.

Clerk reads.—This is directed to sir Philip Skippon, knight, at Ipswich, and dated Nov. 29, 1683.

(Reads) "Sir, The return of"———

Mr. *Williams.* That is not sir Samuel's hand, I think.

L. C. J. No, but writ by his order.

Osland. I transcribed it by his special order: For he came to me and gave me a letter, says he, Go and make me a copy of this letter.

Recorder. And you did transcribe it exactly as it was in the paper he gave you?

Osland. I examined it after I had writ it myself, and read it over again.

L. C. J. What did you write it out of?

Osland. A copy he gave me.

L. C. J. Was that copy his hand-writing?

Osland. I did not see him write it, but I believe it to be his writing.

L. C. J. Come read it.—*Clerk* reads.

'Sir; The return of the duke of Monmouth to Whitehall, and his being received into extraordinary favour of his majesty, hath made a strange alteration of affairs at court: for those that before spake of him very indecently, now court, cringe, and creep to him. His grace complained to the king of the scandalous misrepresentation that was made of him in the Monday's Gazette, upon which the Gazetteer was called to account for it, who alledged for himself, That a person of great quality sent him in writing the words therein recited, commanding him to put them in the Gazette.

'Yesterday being the last day of the term, all the prisoners that were in the Tower upon

'the late sham Protestant Plot, were discharged 'with bail. Mr. Braddon, who prosecuted the [murd]er of the earl of Essex, the information 'put in against him in the King's-bench, by 'Mr. Attorney, (for a pretended subornation,) '&c. was not prosecuted, and his bail was discharged. And the passing sentence upon 'the author of Julian the Apostate, and the 'printer of the late lord Russell's Speech, was 'passed over in silence. Great applications are 'made to his majesty for the pardoning Mr. 'Sidney, in the Tower, which is believed will 'be attained, and that he will be banished.

'The lord Howard appears despicable in the 'eyes of all men; he is under guard at White-'hall, and believed he will be sent to the Tower, 'for that the duke of Monmouth will accuse 'him concerning the testimony he hath given, '&c.

'The Papists and high Tories are quite down 'in the mouth, their pride is abated, themselves 'and their plot confounded, but their malice is 'not assuaged. It is generally said the earl of 'Essex was murdered. The brave lord Russell is afresh lamented. The Plot is lost here, 'except you in the country can find it out 'amongst the addressers and abhorrers.

'This sudden turn is an amazement to all 'men, and must produce some strange events, 'which a little time will shew.'

Recorder. Now go on to the next. The second Letter.

Clerk reads—This is directed, 'To sir Philip Skippon, knight, at Ipswich, Suffolk.'

L. C. J. That is one of his own writing.

Recorder. Yes, my lord.

Clerk. It is dated London the first of December, 1683.

'Dear Sir; I am to answer yours of the 27th 'and 29th past, and truly I cannot but with 'great sorrow lament the loss of our good 'friend, honest Mr. John Wright, but with 'patience we must submit to the Almighty, 'who can as well raise up instruments to do 'his work, as change hearts, of which we have 'so great an instance in the business of the duke 'of Monmouth, that no age or history can parallel. I am now thoroughly satisfied, that 'what was printed in the Monday's Gazette is 'utterly false, and you will see it publicly declared so shortly. The king is never pleased 'but when he is with him, hath commanded 'all the privy council to wait upon him, and 'happy is he that hath most of his favour. His 'pardon was sealed and delivered to him last 'Wednesday. It is said, he will be restored to 'be master of the horse, and be called into the 'council table, and to all his other places, and 'it is reported he will be made captain general 'of all the forces, and lord high admiral, &c. 'He treats all his old friends, that daily visit 'him, with great civilities; they are all satisfied 'with his integrity; and if God spares his life, 'I doubt not but he will be an instrument of 'much good to the king and kingdom. He 'said publicly, That he knew my lord Russell 'was as loyal a subject as any in England, and 'that his majesty believed the same now. I 'intend shortly to wait on him myself. It 'would make you laugh to see how strangely 'our high Tories and clergy are mortified, their 'countenance speak it. Were my Shesorary 'to be moved for now, it would be readily 'granted. Sir George is grown very humble. 'It is said Mr. Sidney is reprieved for forty 'days, which bodes well.—Mr. Kedder sat with 'me some time this evening.'

L. C. J. There is no more in the record.

Recorder. No, my lord. Then go on to the third.

Clerk. This is directed "For Mr. Edward Gael, linen-draper, at Ipswich."

Mr. *Williams.* Is it likely he should write these Letters to a draper?

L. C. J. It is, it seems, the ordinary riff-raff he writes. He thinks it not below him to keep a correspondence with all the scoundrels of his party in the country.

Recorder. Ay, all sorts of trades he is acquainted with.

Clerk. It is dated the 1st of December, 1683. Reads.——Mr. Gael, 'This evening Mr. Kedder came and sat with me—'

L. C. J. Will you have it all read?

Mr. *Williams.* No, my lord, we do not desire it.

L. C. J. Then read what is in the record.

Recorder. Look where the passage begins, 'The late Change——'

Clerk. Where is it, Sir? It is not marked.

L. C. J. If you cannot find it out, then read the whole.

Clerk reads —— Mr. Gael, This evening Mr. 'Kedder came and sat with me, when acquainted 'him what you and others writ me in reference 'to himself, as also of the death of Mr. Wright, 'which he was sorry for. He protested, if he 'could persuade his wife, he would accept of 'Ipswich choice, notwithstanding all the discouragement he had met with. One more he 'acquainted me with, that had seen a letter 'from Mr. Cutliffe to Dr. Clegat, extremely 'discouraging him from coming to Ipswich, 'where if he did come, said, would find himself mistaken, for that would never enjoy 'quietness or peace, notwithstanding his balsamick temper, &c. as he called it. These 'things frights Mr. Kedder, who I am now 'persuading so soon as he is up again, to go 'down for a month or two, and then if he doth 'not like the place and people, may return 'hither again. This I resolve to press hard on 'Monday, when have promised to dine with 'me, as also Mr. Hodges. Be confident I 'shall think nothing too much to effect this 'business, though one or other still pulls down 'as fast as I build up.——Here is now a door 'of encouragement opened for sober men to 'come into public employment. You will 'undo the town of Ipswich if you bring not 'sober men into play: For God's sake consider 'of it. Persuade Mr. Snilling, or some sober 'men, to come in their two Ports-mens places, 'void: for other matters, refer you to sir R.

'The late change here in public affairs, is so 'great and strange.'

L. C. J. There begins the passage in the record.

Clerk reads——'The late change here in 'public affairs is so great and strange, that we 'are like men in a dream, can hardly believe 'what we see, and fear we are not fit for so 'great a mercy as the present juncture seems 'to promise. The earl of Mackensfield* is 'bringing actions of Scandalis Magnatum 'against all the grand jurymen that indicted 'him at last assizes. And the several gentle-'men that were indicted in Cheshire and Nor-'thamptonshire, will bring their several ac-'tions at law against them. Acquaint Mr. Snil-'ling'——

L. C. J. There is all that is in the record.

Recorder. There are but two lines more.

Clerk reads—'Acquaint Mr. Snilling we re-'ceived the two barrels of oysters, and two 'couple of ducks, and desire him to take mo-'ney of Buckle for them. I rest, yours'

Recorder. Now go on to the next.

Clerk. This is the fourth Letter: it is directed to Mr. William Cavell, at Brightwell, near Ipswich, in Suffolk, and dated London the 4th of December, 1683. Shall I read it all?

L. C. J. No, no: If you can find that part that is in the record, 'contrary to most men's 'expectations,' there it begins.

Clerk reads.—'Contrary to most men's ex-'pectations, a warrant is signed at last for be-'heading colonel Sidney, at Tower-hill, next 'Friday. Great endeavours have been used to 'obtain his pardon, but the contrary party have 'carried it, which much dasheth our hopes, 'but God still governs. Acquaint Buckle——'

L. C. J. There is all.

Clerk. Here is but a line more (reads) 'Ac-'quaint Buckle, here is no news of Crafton 'Hoy, notwithstanding the wind is fair, it is 'his practice always to loiter by the way. I 'rest, your loving friend.'

Mr. Williams. Pray let me see that Letter.

Recorder. We have done, my lord, we leave it here.

L. C. J. Well, What say you to it that are for the defendant?

Mr. *Williams.* May it please your lordship, and you gentlemen of the jury, I am of counsel here for the defendant, sir Samuel Barnardiston, and the question now before you is, Whether this gentleman be knowingly guilty of the writing and publishing these four Letters, that have been read here to you, and which of them he is guilty of writing, and which not? I do not see that his name is put to any of them; nay, the Letters are not subscribed by any body, and that, gentlemen, you may see by looking upon the Letters For the evidence that hath been given, I beseech your lordship to observe what it is. As to his publishing of them, I see no evidence at all to prove him any way concerned in that: Some of them, indeed, are his own hand-writing, and proved to be his Letters, by his own confession before the king and council; that Mr. Blathwaite and Mr. Atterbury the messenger swear directly, that Sir Samuel Barnardiston did own the Letters, but for the fourth they say he did disown that to be his Letter, and it is not so much as his hand; but what proof is it they have brought to apply this to him? You see what a sort of proof is made: They produce you here a young man that was, as it happened, his servant at this time, and lived in his family with him in the nature of a secretary, it seems; and how fit he was to be entertained in that quality, you, I question not, observe. He says, he did copy this letter by the direction of his master It is well if he did not keep a copy himself by him of such a Letter as this, for a particular use, as some honest servants have done before now, that have designed somewhat of advantage to themselves: But that is his evidence about this fourth Letter. That then, gentlemen, which we would offer on behalf of the defendant, is this, Whether there be any evidence of the publishing of these Letters by sir Samuel Barnardiston, either of all, or any, and which of them? All the proof that I hear, comes from Atterbury, and the clerk of the council, Mr. Blathwaite, which is but this: Atterbury says, That sir Samuel should say, They were sent to the post-house; and Mr. Blathwaite says, he did not deny the publishing of them, but he does not say, he confessed it. As to the sending to the post-house, if it be true, I shall leave it to your lordship, how far that, my lord, can be a publishing of a libel; whether that be a publishing within the information, or no? A gentleman writes a letter to a private friend, and sends it to the post-house; whether that be a publishing of a libel, I leave it to you? For the fourth Letter, this same trusty secretary cannot tell you, whether he delivered it back again to sir Samuel, or no; or whether he put it in the window; or whether he delivered it in at the post-house, only, as he believes, he laid it in the window as he used to do other letters. But whatever he believes must not pass for evidence, especially in matters of this nature, it being a great crime, as the information has set it forth. If then there is no proof (as with submission I hope there is not) of the publication of these Letters, I suppose, gentlemen, you will not take it upon your oaths, that he is guilty of what he is here accused of without evidence. This information, gentlemen, doth mention several things, which do very much aggravate the matter, if they were proved. Many things are laid in it to induce the information, and

* See the Case of the earl of Macclesfield *v.* Starkey, in this same year. In 3 Mod. 41, it appears that the earl (then called earl of Macklefield,) had brought an action upon the statute, De Scand. Magn. against sir Thomas Grosvenor, for saying, when foreman of the grand jury in Cheshire, that the earl was a tedious man, [qu. seditious] and promoter of tedious addresses.

which may much enhance the crime, but of which I see no manner of proof at all. Many things are mentioned as facts leading to the main facts, which is the great offence; but these not being proved upon him, I desire he may be acquitted of that part.

L. C. J. What do you mean, Mr. Williams?—Mr. *Williams.* Of all your preamble.

L. C. J. What preamble do you mean?

Mr. *Williams.* That he being a person of a turbulent and unquiet spirit——

L. C. J. Why, Mr. Williams: would you have the jury find that he is not so?

Mr. *Williams* My lord, there is no proof of it: or that he did do it with a design seditiously to disturb the peace, that he did it with a seditious intent.

L. C. J. You would have the jury find, I warrant, that he did it piously, and with a good intent.

Mr. *Williams.* My lord, there is a middle way——

L. C. J. No, no, Mr. Williams, let us have none of that doctrine, we must have a care of that, and your middle ways. For certainly the law supplies the proof, if the thing itself speaks malice and sedition. As it is in murder, we say always in the Indictment, He did it by the instigation of the devil: Can the jury, if they find the fact, find he did it not by such instigation? No, that does necessarily attend the very nature of such an action, or thing. So, in informations for offences of this nature, we say, He did it falsely, maliciously, and seditiously, which are the formal words; but, if the nature of the thing be such as necessarily imports malice, reproach, and scandal to the government, there needs no proof but of the fact done, the law supplies the rest. If the fact were indifferent in itself, then to make a crime of it, the accidental circumstances must be proved, but it needs not where the thing implies malice in its own nature. You would have the jury find he had no ill design in it; he did it with a good intent, I warrant you.

Mr. *Williams.* All I would ask, my lord, is but this——

L. C. J. Do you think he did it to serve the crown? If the jury will take it upon their oaths, that sir Samuel Barnardiston wrote these Letters to serve the crown, you say something. Pray ask them that question. Try if you can make them believe that, Mr. Williams.

Mr. *Williams.* There is no evidence given about this malice.

L. C. J. Yes, the very thing is evidence of itself.

Mr. *Williams.* Pray, my lord, let the fact lie upon its own weight: There is no proof given of any of these aggravating things.

L. C. J. How shall any man prove another man's malice, which is a thing that lies only in a man's mind? How should any man know that I am malicious against the government, but by my actions.

Mr. *Williams.* I lay it before your lordship and the jury.

L. C. J. No proof can be expected, but what the nature of every thing will bear.

Mr. *Williams.* Then I pray this, my lord, that I may be at liberty next term, if we be convicted, to urge this, and observe in mitigation of the punishment, that there was nothing of these things proved.

L. C. J. Urge what you can in its proper time, but offer nothing here but what is fit to be offered.

Mr. *Williams.* Here are mentioned in this Information, (though it be by way of inducement, yet they must be proved) things that are matters of record, but they have proved none of them.

L. C. J. Have you any of those records here, the convictions of my lord Russell and colonel Sidney?

Recorder. Those things are so well known, I suppose they will not contest them.

Mr. *Williams.* Sir, I must lay hold on all advantages for my client. You have made them part of your case, pray prove them.

Recorder. Truly, my lord, we did not think they would have made that any question, and we have them not here. They know it well enough to be true.

L. C. J. If you have them not here, go and find them; if they insist upon it, you must prove them. I will stay till you fetch them.

Mr. *Williams.* My lord, we would not hinder your lordship's business——

L. C. J. No, no, it will be no hindrance, I will do something else in the mean time. This is a cause of public example and consequence, and I will give it all the fair hearing I can.

Mr. *Williams.* My lord, if you please, there is, I suppose, no such haste of trying this cause now, to hinder business, and keep you here longer than needs. This cause may as well be tried the beginning of next term.

L. C. J. No, no, I will make an end of it now, if I stay never so long for it; indeed the defendant says, 'I am down in the mouth:' It is true, I have got a little hoarseness, but I thank God my heart is not down, nor I hope never will be to serve the government.

Mr *Williams.* If they will, they shall find the Letters without the records.

Mr. *Jones.* No, no, we must have the records, though it is true it is but matter of form, yet we must prove our whole case.

L. C J. Well, I will stay till they are fetched. Let the jury stand by, and I will go on and try another cause, and in the mean time fetch these records. Do not make two journies, but bring all that are mentioned in the record.

Then the Jury were set by, and the court went on in some other causes, and about an hour and an half, after the Records were brought, and this cause was resumed, and proceeded thus.

L. C. J. Well, come, have you those records now?

Recorder. Yes, swear Mr. Tindal. [Which was done.] Is that a true copy?

Tindal. Yes, it is a true copy of the indictment, conviction, and attainder of my lord Russell, I examined it with Mr. Tanner.

L. C. J. Well, put it in. [And then a word of it was read by the clerk.]

Recorder. And here is the record itself of the attainder of colonel Sidney. [Which was some part of it read also.]

L. C. J. What say you now to it, gentlemen, for the defendant?

Mr. *Thompson.* My lord, I have nothing more to say than has been said.

L. C. J. All this was well enough known.

Mr. *Jones.* Ay, but they would give the court all the trouble they could by making them send for that which they could not deny.

L. C. J. Gentlemen of the jury, Here is an information exhibited against sir Samuel Barnardiston, and the information sets forth this matter. It doth take notice of a horrid conspiracy, a damnable conspiracy, lately hatched and set on foot for the destruction of the king, and for the subversion of the government; that there were divers persons who were indicted, and stood convicted, and were afterwards executed for this horrid conspiracy. Among the rest, there is notice taken of my lord Russell for one, and colonel Sidney (he went by that name, Algernon Sidney I mean) for another, to be two of those conspirators that were engaged in that damnable conspiracy for the destruction of the king, and subversion of the government.

Now, Gentlemen, That these persons according to the inducement of this information, were so indicted, so attainted and executed (as far forth as is cited in the information) is proved to you by the two records, which the counsel on the other side insisted to have shewn, and which have been now produced. The one is sworn to be a true copy of the conviction and attainder of my lord Russell, and the other which they produced, was the record itself of the conviction and attainder of Sidney. So that, as to that part it is plain, they were convicted and attainted, both the one and the other, as actors in that hellish plot.

The next thing, Gentlemen, and which was so much insisted upon by the defendant's counsel, is this: The information takes notice, that the defendant sir Samuel Barnardiston, being a man of a factious, seditious, disaffected temper towards the government, a man of ill principles, in order to disturb, disquiet, and discompose the government, he did cause several Letters, four in number, to be writ and published, which Letters have been read unto you.

It hath been objected, That in as much as the words falsely, seditiously, maliciously, factiously, and the like words are in the information, they would have you believe, that there being no evidence of any such thing, as faction, malice, and sedition, or that the man did it maliciously, and advisedly, and seditiously, (which are the words in the premises, as I may call them, or the preamble of the information) therefore they must be acquitted of that part. Now as to that, I told them then, and tell you now, gentlemen, that no man living can discover the malicious evil designs and intentions of any other man, so as to give evidence of them, but by their words and actions. No man can prove what I intend, but by my words and actions. Therefore if one doth compass and imagine the death of the king, that by our law is high treason; but whether or no he be guilty of this treason, so as to be convicted of it by another, is not proveable, or discoverable, but by some words or actions, whereby the imagination may be manifested. And therefore my imagining, my compassing, which is private in my own mind, must be submitted to the judgment that reason and the law passeth upon my words or actions, and then the action itself being proved, that discovers with what mind the thing was done; as in the case I put before to the counsel. Suppose any man without provocation kill another, the words of the indictment are, that he did it maliciously, feloniously, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil. Now all these things, whether he had the fear of God before his eyes or not; or whether he were moved by the instigation of the devil, and of his malice forethought, or no; these cannot be known, till they come to be proved by the action that is done.

So that in case any person doth write libels, or publish any expressions which in themselves carry sedition and faction, and ill-will towards the government; I cannot tell well how to express it otherwise in his accusation, than by such words, that he did it seditiously, factiously, and maliciously. And the proof of the thing itself proves the evil mind it was done with. If then, gentlemen, you believe the defendant, sir Samuel Barnardiston, did write and publish these Letters, that is proof enough of the words, maliciously, seditiously, and factiously, laid in the information.

The Letters are factious, seditious, and malicious letters, and as base as the worst of mankind (though he had had all the provocation that ever could be given a man to libel another) could ever have invented.

And let sir Samuel Barnardiston put it under the countenance, or under the umbrage, or under the enamel of his zeal for the true Protestant Religion, if he will; or if he have a mind to it, to give himself any fine name, by calling himself one of the sober party, or godly party; or the upright party; let him gild himself, and paint himself as he pleaseth, yet the inside is rotten, and it is factious and seditious at the bottom to all intents and purposes whatsoever. And if he be guilty of it, as you gentlemen are to try and consider; the greater the man is, the greater the crime; and the more understanding he has, the more malicious he seems to be: for your little ordinary sort of people, that are of common mean understanding, they may be wheedled and drawn in; and

surprized into such things; but men of a public figure, and of some value in the world, that have been taken to be men of the greatest interest and reputation in a party, it cannot be thought a sudden surprize upon them; no, it is a work of time and thought, it is a thing fixed in his very nature, and it shews so much venom, as would make one think the whole mass of his blood were corrupted. I had thought the Act of Oblivion might have put sir Samuel Barnardiston in mind, that it was not fit any more to go down to Whitehall, to make uproars, and tumults, and hubbubs.

But here is the matter that he now is accused of, and here is in it, malice against the king, malice against the government, malice against both church and state, malice against any man that bears any share in the government, indeed malice against all mankind that are not of the same persuasion with those bloody miscreants, (I cannot give them a milder name) I mean the conspirators in the late damnable conspiracy, some of whom have been attainted and executed for it. Here is the sanctifying of traitors, that were justly sentenced to execution according to the law of the land, and at the same time there is joined with it, the most inveterate insinuation against the government that can be, as though the king was prevailed with, upon a Sham Protestant Plot, to do things in order to destroy government itself, and every one of the 'Sober Party,' as they call themselves. For these persons could not have suffered but as condemned according to the rules of law, but these Letters carry an insinuation as if they were cut off by a sham trick and design. For after the good news of the reprieve of Sidney was contradicted, the warrant for his execution is taken notice of, and you see the manner of expression that is used, 'their 'party has prevailed,' as though the putting the laws in execution, and hanging of traitors, were such a thing that the party must be set up to prevail to do it, and mankind must be divided into parties, their party and our party, and the contrary party, they have prevailed, and truly now our party, the 'Sober Party' as he calls it, are in a very sad condition.

Then here is, as I said, the sainting of two horrid conspirators, here is the lord Russell sainted, that blessed martyr, my lord Russell, that good man, that excellent Protestant, he is lamented, and what an extraordinary man he was, who was fairly tried, and justly convicted and attainted, for having a hand in this horrid conspiracy against the life of the king, and his dearest brother his royal highness, and for the subversion of the government. And here is Mr Sidney sainted, what an extraordinary man he was! Yes, surely, he was a very good man, because you may some of you remember, or have read the history of those times, and know what share Mr Sidney had in that black and horrid villainy, that cursed treason and murder, the murder, I mean of king Charles 1, of blessed memory, a shame to religion itself, a perpetual reproach to the island we live in, to think that a prince should be brought by pretended methods of law and justice to such an end at his own palace. And it is a shame to think, that such bloody miscreants should be sainted and lamented, who had any hand in that horrid murder and treason, and who to their dying minutes, when they were upon the brink of eternity, and just stepping into another world, could confidently bless God for their being engaged in that good cause, (as they call it) which was the rebellion which brought that blessed martyr to his death. It is high time for all mankind, that have any Christianity, or sense of Heaven or hell, to bestir themselves, to rid the nation of such caterpillars, such monsters of villainy as these are.

Nay, In these very Letters is contained the very language of that cursed murderer and traitor Walcot himself, 'That God Almighty 'in his own time would raise up instruments.'* I know, gentlemen, you have heard and read what that bloody traitor said to that effect; and you hear what expressions like it are in these Letters, 'I am sorry for the death of our friend, 'honest Mr John Wright, but God can easily 'raise up instruments to do his own work;' the very language of Walcot. And I would have you take notice of it, Mr Blackerby for I would have you take warning by these things. [Speaking to a gentleman that was taking notes.]

Mr *Blackerby*. My lord, I have neither said nor done any thing that should give you occasion to speak thus to me.

L. C. J. These Letters tell you, 'God will 'be sure to raise up instruments,' but what instruments do they mean? Instruments of rebellion, and faction, and sedition, which they most falsely call, 'his own work.' For it is that monstrous sin rebellion, that they mean by it, instruments of treason, under pretence of fighting for God Almighty they would fain be fighting against the government. It was the language of the former times, wherewith they destroyed the best of kings, and subverted the best of governments for a time, and were very near having totally destroyed three kingdoms, under pretence of doing God good service. And when once a people pursue such principles, and, under the pretence of religion, endeavour to destroy monarchy and government itself, it is high time for all honest men to look about them.

Nay, and you may observe, Gentlemen, another thing in these Letters, it is not only the destruction of the civil government, the King, and those that are in authority near him, that are aimed at; but all persons that come with humble representations of their loyalty to him, all that address themselves to the king to shew their duty and their dislike to that damnable design and conspiracy against him. 'For now' (says sir Samuel Barnardiston) 'all the Sham 'Plot is quite blown off, and we cannot find

* See p 672, of this Volume.

'any here, it is lost, except you can find it 'among the Addressers and Abhorrers in the 'country, or among a parcel of clergymen.' So that all mankind, that ever thought themselves obliged to congratulate that blessed and happy deliverance, either to own our thankfulness to God for it, to whom we owe more than we are able to pay for his great mercy to us therein, or to express our joy to the king, in humble addresses, congratulating his deliverance from the horrid conspiracy late designed against him, his brother and the government; these gentlemen, because they are loyal subjects, and desire to shew themselves so, must be branded with the names of 'Abhorrers, 'Tories, Addressers, Sham-Plotters,' and all the ignominy they can lay upon them. This shews it was not only aimed at the civil magistracy, but at all that dare be honest and oppose faction and rebellion.

As for any thing that he has said of me, sir Samuel Barnardiston shall write and speak of me as long as he pleases. But though he says, 'I am down in the mouth;' it is true, I have a little lost my tongue by my cold, yet I hope I shall never lose my heart nor spirit to serve the government, nor forbear to use my utmost diligence to see that such offenders as these persons, that entertain principles so destructive to the government, be brought to condign punishment. And be they who they will, were they my own brothers, I should be of the same mind, and so in that mind I hope in God I shall live and die.

Gentlemen, the question before you is, Whether the Defendant be guilty of writing these malicious, seditious Letters; for that they are malicious and factious, no honest man can doubt in the least; and I do not find that the defendant do offer to say any thing in defence of the Letters, or can say, but that they are as venomous, malicious, seditious, factious, tumultuous Letters,* as can be written, and I must tell you, tread very near upon the borders of high-treason itself. I am sure I may venture to call it cozen-german to high-treason.

Now that he did write and publish them, you have this proof before you: Mr. Blathwaite tells you, that sir Samuel did own three of them, acknowledge them to be his own writing, before his sacred majesty in council. Atterbury the messenger says, he was by too, when he did before the king acknowledge the writing of those three Letters. As to the superscription to one of those three Letters, you have the testimony of Osland, the young man that lived with sir Samuel Barnardiston, he swears he writ it by his direction, being his servant. And as to the fourth Letter, this young man does directly swear, that the original he copied it by, (for it is his writing) he had from sir Samuel Barnardiston, and it was of sir Samuel's own writing, (which he knows well, being acquainted with his hand) and that sir Samuel expressly directed him to copy it out, which he did by his command, and this is the same Letter; and so though it is not under his hand, yet it is under his man's, and written by his direction. And he says, he does believe the other three to be his hand-writing. So as to the dictating and writing of these Letters, you have as full and as plain a proof as can be made.

And as to his publishing of them, which is another part of the information, and of which Mr. Williams said there was no proof, I would say but this to you. Is it not very preposterous, absurd, and senseless, to think that ever it should enter into any man's imagination, that sir Samuel Barnardiston would take such a wonderful deal of pains and care to write these Letters to sir Philip Skippon, and to the other two men, to tell them of his endeavours to take off Mr Kedder's scruples, and persuade him to go down to Ipswich, and to desire them to take care of the Sober Party, and endeavour to get Sober Men into play, and all will do well, and that the duke of Monmouth had denied all the Plot, and so given the lie to the king and the courts of justice, and now there was a door opened for Sober Men to come in, and God would raise up instruments, and the Sober Party will up again? Do you think, I say, he would write all this fustian stuff, (for I can call it no better than stuff, though it be very malicious stuff) and carry to his man to copy out, and superscribe them and seal them, only to put them in his pocket? If you can believe this, upon my word you have a faith able to remove great mountains; but I assure you my faith cannot get to that strength.

But for further proof of the publishing, you hear what the young man that was the defendant's servant says. He tells you, the usual way of dealing with sir Samuel's letters was this, There was a window near sir Samuel's closet, and when the letters were sealed up, they were used to be put there, in order that the boy, according to the usual course, might carry them to the post-house. And he doth believe these Letters (though he cannot particularly and positively speak to them) were so used.

Besides all this, you have it by Atterbury positively sworn, that about the same time that sir Samuel Barnardiston did acknowledge before the king, that he writ those Letters, being in his custody, he did say they were sent to the post-house, and he wondered how they came by them. That proves it was done by his privity. And beyond all there is this circumstance, that the thing speaks itself, they are directed to men at Ipswich, where sir Samuel Barnardiston is known to have a correspondence; they take notice of the receipt of letters from thence, and of the death of Mr. Wright, mentioned in those letters, which shews them to be answers to letters received; and must not these think you be sent, but kept still in his pocket? There is notice also taken

* See in this Collection, Remarks on the Trial of John Peter Zenger, A. D. 1735.

in them, of their country affairs: Though they seemed to have met with some disappointment in such a business about Mr. Kedder, yet they were resolved to go on, and desires them to communicate this business of Mr. Kedder and Dr. Cleggit, to such and such of our friends, and desire them to bestir themselves, and get in sober men, such as Mr. Kedder, among them. For it is mightily for our advantage, that there should be sober men brought into play at Ipswich, and I pray be sure to keep the sober party up. These things in their own nature speak, that these letters were intended and written, in order to preserve a correspondence between those of the sober party in Ipswich, and their friends here, and therefore you may easily conclude what was to be done with them.

So that, Gentlemen, this information surely, (if ever any was) is fully proved, as it is laid in all the parts of it.

I would not have given you so much trouble at this time, in an affair of this nature, that has been so evidently proved, because your question that you are to try, is only, whether the defendant be guilty of this offence, or not guilty? (You are not to inflict the penalty, that is the province of the court above;) but only, because I see it is a matter of a great expectation and consequence. I would not we should be gulled twice in one age, by the self-same men, and the self-same way, into the same treason and rebellion, and all those other mischiefs, that dreadful chaos and state of confusion, misery and destruction, that we were brought into in the late times. And that has made me take so much notice now in this place of the tendency of things of this nature, that we may learn to beware of, and know these men that carry sheep's clothing, pretend zeal and religion, but their insides are wolves. They are traitors in their minds, whatsoever they are in their outward pretences.

Then the Jury laid their heads together in the place where they stood, and being presently after agreed upon their verdict, the foreman gave it in: 'That the defendant sir Samuel Barnardiston was Guilty of the offence 'and misdemeanor, charged on him by the 'Information.' Which verdict was recorded by the clerk.

Proceedings upon a Motion in Arrest of Judgment in the Case of the KING against Sir SAMUEL BARNARDISTON, bart. Now first printed from the MS. of Sir William Williams, communicated for this Work (A. D. 1811) by his Descendant, Mr. Charles Watkin Williams Wynn.

Die Sabbati, 19 *Aprilis*, 1684.

Term' Pas. 36 *Car.* 2. *in B. R.*

D'NUS REX *versus* BARNARDISTON *bart.*

Att. Gen. (Sir Robert Sawyer.) My lord, I have one word to move before these gentlemen begin their arguments.

L. C. J. (Sir George Jefferies.) What is that Mr. Attorney?

Att. Gen. They gave me notice last night that they would come here this day, and move in arrest of Judgment I desire I may have a note of their Exceptions, and I will be ready any day you will appoint.

L. C. J. In what case is that, Sir?

Att. Gen. In the case of sir Samuel Barnardiston, my lord.

L. C. J. That is but reasonable. Who is of counsel for sir Samuel Barnardiston?

Mr. *Williams.* I am of counsel for sir Samuel Barnardiston; but I cannot write down my Exceptions, I will make them at the bar.

L. C. J. Why, Mr. Williams? why cannot you write them down?

Mr. *Williams.* I write a very ill hand, my lord; I cannot write them.

L. C. J. I have seen your name in very legible characters, Mr. Williams*.

Mr. *Williams.* My name is well printed, my lord, but is not so well writ.

L. C. J. I do not think so, I assure you; I beg your pardon for that.

Just. *Withins.* It is but fair, that Mr. Attorney asks; and then we will appoint a day for it.

Att. Gen. Ay, my lord, let them take their own day in any reasonable time.

Mr. *Williams.* I beg your pardon, Mr. Attorney; I cannot do it.

L. C. J. Then if you be so stiff, we will hear them presently; and let the Arguments stay till this cause be done.

Just. *Withins.* Is sir Samuel Barnardiston there?

L. C. J. Yes, there he is, let him stand forward; come, Mr. Williams, what say you to it for him?

Mr. *Williams.* May it please your lordship, I am of counsel in this case for the defendant, sir Samuel Barnardiston. This Information was tried before your lordship the sitting after the last term, at Guildhall, in London. It is an information exhibited against sir Samuel Barnardiston, filed the last term, in the beginning

* This probably was said in allusion to the Order which was signed by Mr. Williams as Speaker of the House of Commons for printing the Narrative of Dangerfield. See in this Collection, the case of sir William Williams, A. D. 1686.

of the term, during sir Samuel's sickness. It doth introduce the crime charged upon the defendant, (which is writing of several Letters into the country) with a relation of the late horrid conspiracy against the life of the king and his royal highness the duke of York; and instanceth in several persons concerned therein, who were convicted and attainted, as my lord Russell and colonel Sidney. And it goes on further, that sir Samuel Barnardiston, being a person of a seditious evil disposition, and temper, and giveth him a very ill character, as one of an unquiet, turbulent mind, and conversation, and falsely and maliciously practising and intending our lord the king and his government, and the public administration of justice within this kingdom into hatred and scandal to bring, and discord and sedition between the king and his subjects, and between the subjects themselves, to incite and procure, did make and cause to be made the several libels in the information mentioned, which are indeed Letters, private Letters, which are in part recited *in hæc verba*. The first is mentioned to be dated the 29th of November 1683; and all of them are dated in November and December last; and it must be agreed they were all written within six days time, two of them are of the same date, to wit 1st of December last. After the recital of those passages which they thought fit to pick out of them, this Information concludes thus; 'That 'this was done to stir up, move and procure 'sedition, discord, and ill will between the king 'and his subjects, and between the subjects 'one another and the evil example,' &c. He is found guilty of all the matter charged in this information. That which I offer in arrest of Judgment in the first place is this. As to one thing I must appeal to your lordship's memory who tried this cause. There was no proof made of the introduction part at all. That is, as to sir Samuel's disposition being seditious, and factious, and that he did this on purpose to promote sedition, and stir up discord between the king and his subjects. There was no actual proof to that purpose. So that for any thing that did appear, sir Samuel Barnardiston, upon the Trial, stood in the condition of any other subject. So then all the fault is to be collected only out of the matter of the information: it is that which must govern this case; but as to his disposition and inclination that remains without any objection proved in the cause. But the matter in controversy will wholly turn upon the nature of the Letters how far they of themselves tend to sedition, and are libels. If there be not such matter expressed in these Letters, then there is no cause for this information For it is not the induction and inference of the informer, that affirms these Letters were written with a design to raise sedition and discord, that amounts to a proof, unless the Letters be seditious: for if it were, that were no more than to raise a conclusion without premises to warrant and ground such a conclusion: And that can be no argument, but only allegation: it is so, because it is so. Therefore we must look into the Letters themselves. And to begin with the first of them (for there are four in number), though I would observe, as to them all in general, what I opened at first, that these four Letters were all dated, and published, as they wou'd have it, within the compass of six days: But that which I would observe further, is, that, to my apprehension, the words of the last Letter do in a great measure correct and qualify the meaning of the other three. The purport of all of them as appears upon the reading, shews, that they are no more in truth than letters of news sent by sir Samuel Barnardiston. For the matter of the Letters I appeal to your lordship's memory and to the record, that they are no more than letters of news about the town. It is said so and so. And, I hope, not so extravagant, as the information wou'd have them be. These are letters of news, I say, sent by a private gentleman to his friends by the public post, for so it was sworn that they were to be sent: And then I think it will at most amount to no more than false news. And he, as many men in the town who are presumed to have the best intelligence, might be mistaken in the news of the town, and so send false news into the country. If then that be the case, if sir Samuel writ no more than the common talk of the town, which in truth was false, and if he writ this as the common talk of the town by the post, to private gentlemen his friends; this sure will not be looked upon as libellous and seditious. Another thing, my lord, I say is this; That, as I opened it at the first, nothing doth appear except by way of inducement, which is but flourish and garniture; nor was there any thing proved upon the trial, but that sir Samuel Barnardiston was as honest, and as innocent of sedition, or any of those crimes, as I or any other man.

L. C. J. How do you mean, Mr. Williams? Pray explain yourself.

Mr. *Williams.* It did not appear any thing in proof, I say, to the contrary.

L. C. J. Why, Mr. Williams, are you guilty of writing such Letters as these are? I hope not.

Mr. *Williams.* No, no, my lord.

L. C. J. How, then, is sir Samuel as free as you?

Mr. *Williams.* I hate comparisons, my lord; but I say nothing did appear upon the proof.

Just. *Withins.* He says, he cannot write.

Mr. *Williams.* I speak of the gentlemen that are about me, or any honest man.

Att. Gen. I hope Mr Williams does not intend to draw himself into the guilt of such a crime as this.

Mr. *Williams.* Mr. Attorney, I said that nothing more appeared at the trial, but these Letters against sir Samuel Barnardiston, and then the case stands thus. It is no more than if an innocent man without sedition, or any thing of that nature, should write a letter of news, which he hears, but really it is false news; and so a letter of false news is sent from an innocent subject to an innocent subject. That

was all I meant. For the Letters themselves; the first is to this purpose, some things in the Letter are positive, and all that is true; That the duke of Monmouth was returned to court about that time; and that he had his pardon; that is true too: other things are by way of hearsay, and I must confess, many of those hearsays are mistaken. But yet still, when a man writes a hearsay, it is true that he did hear it, but whether it be true in fact, as he heard it, that cannot be averred. He only says it is true that he heard it; not that what he heard is true. Then it is no more than a man's writing of that, which is a story about the town; and he writes it as a hearsay. Whether this be such a fault, as is laid in this information, is the question. Possibly it may be to be punished in another way, upon the statute against false news; and the defendant may incur a penalty upon that statute, as a publisher of false news. But to make this seditious, and such a crime as is the stirring up of sedition, disturbing the government, and raising of discords in the kingdom. This sure imports no such matter; it cannot bear the face of this crime. I would not trouble you with the reading of the Letter.

L. C. J. No, but you shall have them read out, by and by; because you would feign have sir Samuel Barnardiston pass for such an innocent man; as if there were no harm in him at all.

Mr. *Williams.* My lord, I say this: what is positive, in the Letters is true in substance; what is by hearsay, it may be is mistaken and false; but I hope that may not be such a crime, as to deserve this information. As to the second Letter, I have the same to say; that part of it which is positive is true; the other part is but historical, and by way of relation and hearsay. As for the third Letter, there is the same answer to be given as to the first, and second. But the fourth Letter, that salves the whole; and shews sir Samuel Barnardiston to be an innocent news writer, without any design of ill will to the government, or to raise any sedition. In the first, second, and third Letters, he seems to be in some extacy, some astonishment at some things, that had happened at that time, as possibly a great many others might be astonished, then, which might have other thoughts of things than he had; and so he writes like a man in a dream.

L. C. J. Then he should have read it over again, when he was awake; or we shall for him and so rouse him up a little.

Mr. *Williams.* When he comes to the last Letter, which is dated the 4th of December, now he is awake, and comes and recollects himself. We have been under a mistake, says he.

Mr. Justice *Withins.* But it seems he had a good nap of it: he was asleep for six days together.

Mr. *Williams.* My lord, men in a surprize are like men in dream, till the shadows vanish, that had troubled the brain; but you see when every-thing appeared in due order above water, then he sets things strait in his last Letter, and tells his friend, he was mistaken; he had wrong information; things were not as he had had them represented to him. So it appears he had no design to raise sedition and disturbance by his Letters; for if he had, he would not have writ the last Letter, which contradicts the former, but shews he was willing to let them know the truth. So that my lord, I hope he has done no more, that what is the daily error of every man: news talking and news writing begets a great many false stories, but he rectifies the mistake as soon as he knows it. The writing and spreading of news, I confess, is too common a thing.

L. C. J. It is so, Mr. Williams, I agree it; and we have one now before us to make an example of, to prevent it.

Mr. *Williams.* My lord, these objections I have stated upon the body, and matter of the information; but for a home exception to the record, if my copy be true, I have one that must be fatal.

L. C. J. Ay, pray, let us have it; for upon my word all that has been said yet has been very far from home.

Mr. *Williams.* My lord, my exception is this; one of these Letters they say was made and published in 'Parochia Sancti Martini in Campis in Comitatu Middlesex;' whereas all the rest of the things are laid to be done in 'Parochia St. Michael's, Cornhill, in Warda de Cornhill, London,' and this cause is tried in London: which, the offence being laid part in Middlesex, must needs be a mis-trial.

L. C. J. See the Record.

Cl. of Cr. Which of the Letters do you mean, Sir? for there are four of them.

Mr. *Williams.* The third Letter, that of the first of December.

Cl. of Cr. That is a mistake, sure.

L. C. J. Where is it a mistake?

Cl. of Cr. In Mr. Williams's copy, my lord.

L. C. J. Read as it is on the Record, man, what care I how his copy is?

Cl. of Cr. It is 'apud parochiam predictam in wardâ predictâ.'

L. C. J. What parish, and what ward is that?

Cl. of Cr. 'Parochia S'c'i Michaelis Basishaw in Wardâ Basishaw, London.'

L. C. J. Your copy is mistaken throughout. Read the whole Information.

Mr. *Att. Gen.* If you please, my lord, let it be so; for we should have prayed it might, by and by; for it needs no aggravation.

L. C. J. Ay, Mr. Attorney, I spake it for the same reason; that my brothers may hear it, and the bar may hear it. Now do you hearken to it, and take what exceptions to it you can, Mr. Williams; for your other exceptions are without book, and indeed not worth writing.

Cl. of Cr. 'Memorand' quod Rob'tus Sawyer 'Miles, Attorn. Regis, &c.'

L. C. J. Read it in English.

Cl. of Cr. 'Whereas a certain devilish and 'traitorous conspiracy and insurrection of

'divers seditious and evil disposed persons, our 'sovereign lord Charles the Second, now 'king of England, to murder and kill and 'the laws and government of this kingdom 'of England, as by law now constituted and 'established, to subvert, had been detected. 'And whereas also one William Russell, 'esq. and divers other persons, of that conspi-'racy and treason, by due process of law, had 'been tried, convicted, and attainted, and for 'the same executed; And one Algernon Sid-'ney, esq of that conspiracy and treason stood 'in like manner tried and convicted. And 'whereas upon the trials of the aforesaid Wil-'liam Russell, and the aforesaid Algernon 'Sidney, William lord Howard, baron of Es-'crick, a witness on the part of our said sove-'reign lord the king, the treason and conspiracy 'aforesaid to prove, had been produced. One 'sir Samuel Barnardiston, late of London, ba-'ronet, being a man seditious and pernicious, 'and of a turbulent and unquiet soul, and 'conversation, falsely, unlawfully, wickedly, 'maliciously, seditiously, contriving, practis-'ing, and intending our said lord the king that 'now is, and his government and rule, as also 'the public administration of justice within 'this kingdom of England, in hatred, scandal, 'and disgrace, with his subjects to induce and 'bring, and discord and sedition between our 'said sovereign lord the king, and his liege 'subjects, and between the said subjects to 'move, incite, and procure, as also the 'peace of our said lord the king, and the 'tranquillity of this kingdom of England, to 'disquiet and disturb, and the conspiracy, 'and treason aforesaid to conceal, and the 'evidence for our said lord the king in that 'behalf to vilify, scandalize, and affrighten, 'and his most wicked, devilish, and impious 'contrivances, practices, and intentions afore-'said, to fulfil, perfect, and bring to effect, 'the twentieth day of December in the five 'and thirtieth year of the reign of our sove-'reign lord that now is, at the parish of Saint 'Michael Basishaw, in the ward of Basishaw, 'London, aforesaid, with force and arms, &c 'falsely, unlawfully, unjustly, maliciously, 'corruptly and seditiously made, composed, 'and writ, and caused to be made, written, 'composed, and published a certain false, scan-'dalous and seditious libel, bearing date the '29th day of November, in the year of our Lord '1683, in which said libel, among other things, 'were contained these false, feigned, scandal-'ous, malicious, libellous, seditious, English 'sentences following, viz. "Sir, the return of 'the duke of Monmouth to Whitehall, and his 'being received into so extraordinary favour 'of his majesty, hath made a strange altera-'tion of affairs at court. For those that before 'spoke of him very indecently, now court, 'cringe, and creep to him, his grace," &c. 'And his most wicked, and impious contri-'vances, and intentions aforesaid, further to 'fulfil, perfect, and bring to effect, the said 'sir Samuel Barnardiston, bart, afterwards, to wit, the said 20th day of December, in the 35th year aforesaid, at the parish aforesaid, in the ward aforesaid, falsely, unlawfully, unjustly, maliciously, corruptly, and seditiously did make, compose, and write, and caused to be made, composed, written, and published a certain other false, scandalous, libellous, and seditious libel, bearing date the first day of December, in the year of our Lord 1683, in which said libel among other things were contained these false, feigned, scandalous, malicious, libellous, and seditious English sentences following, viz. "Dear Sir, I am to answer yours," &c.—And his said 'most wicked and impious contrivances, and intentions aforesaid further to fulfil, perfect, 'and bring to effect, the said sir Samuel Bar-'nardiston, afterwards, to wit, the said 20th day of December, in the 35th year aforesaid, at the parish aforesaid, in the ward aforesaid, falsely, unlawfully, unjustly, maliciously, corruptly, and seditiously did make, compose, and write, and caused to be made, composed, written, and published, a certain other false, scandalous, libellous, and seditious libel, bearing date the first day of December in the year of our Lord 1683. In which said libel, among other things were contained these false, feigned, scandalous, malicious, libellous and seditious English sentences, following, viz, "The late change here in public 'affairs," &c.—And his most wicked and im-'pious contrivances and intentions aforesaid 'further to fulfil, perfect, and bring to effect, 'he the said sir Samuel Barnardiston. bart. 'afterwards, the said 20th day of December, 'in the 35th year aforesaid, at the parish 'aforesaid, in the ward aforesaid, falsely, un-'lawfully, unjustly, maliciously, corruptly, 'and seditiously did make, compose, and write, 'and caused to be made, composed, written, 'and published a certain other false, scanda-'lous, libellous, and seditious libel, bearing 'date the fourth day of December, in the year 'of our Lord 1683, in which said libel among 'other things, were contained these false, 'feigned, scandalous, malicious, libellous, and 'seditious English sentences, viz. "Contrary to 'most mens' expectations a warrant"

Mr. *Williams*. This corrects all the former.

Cl. of Cr. '"A warrant is signed at last for 'beheading colonel Sidney, (meaning the said 'Algernon Sidney) at Tower-hill, next Friday, 'great endeavours have been used to obtain 'his pardon, but the contrary party have car-'ried it, which much dashed our hopes; but 'God still governs." To the intent to incite, 'move, and procure sedition, discord and ill-'will between our said lord the king, and the 'subjects of our said lord the king of this 'kingdom of England, as also between them 'the subjects of our said lord the king, to the 'evil and pernicious example of all others in 'the like case offending, and against the peace 'of our said sovereign lord the king that now 'is, his crown and dignity.'

L. C. J. Ay; it corrects it wonderfully, Mr.

Williams: "the contrary party has carried it, and our hopes are dashed."

Sol. Gen. (Mr. Finch) Providence seems to be against him, he says; for "the other party have prevailed, and Sidney is to be executed."

L. C. J. Truly, I think it is as bad as any of the rest; and that is even bad enough of all conscience. "The warrant is signed for Sidney's execution, and our hopes are dashed; but God governs." As much as to say, God Almighty is on the other side, though he suffers those things to be done. Well, have you any more objections?

Mr. *Williams.* That which I relied most upon, it seems, is a mistake in the copy; though I am informed the record was so once. I know not how it comes to be amended.

L. C. J. I believe you did rely upon that; for, if true, it had been a material objection: but that is otherwise in the record. As to the other thing you mentioned, I remember you did tell me at the Trial, you would move that matter here; and I told you, you might move what you would. You say, that there was no evidence given by proof of the defendant's evil disposition, or of these things being done falsely, seditiously, factiously and tumultuously, and the like. There was not any, but what the fact charged proves. It is true, these are words put into the information of course; and there must be some accusations, or words of the person accused, that in their own nature will bear the interpretation of such crimes; or else the charge is not maintained. For if a man should put into an information, that I did falsely, maliciously, and seditiously, speak certain words to Mr. Williams; and when I came to set forth the words, it should only be, that I did ask him this question, how his wife and childen did, or some such like; that would not bear an information, because there was no evil in the very matter of the accusation or words. But now that is not the case here, for I dare be bold to say, these Letters are as vile, and factious, and libellous papers, as seditious and full of malice, as possibly any man could write, it shews the whole mass of his blood is corrupted; for he shews in them his rancour and displeasure against the government in all parts of it, charging it with shamming a Plot upon the nation. Where is your Sham Protestant Plot? It is now among none but the abhorrers, and addressers. Then all the courts of justice and all the judges, they are libelled, by reflecting upon the attainders of those traitors, that have been executed. My lord of Essex, forsooth, he is murdered, and my lord Russell he is afresh lamented. And it must be the prevalency of a party, that brings traitors to execution according to law. Nay, for fear that any man concerned for or in the government should escape without a touch of his kindness, the tories of all sorts, as he calls them, must come in, and the clergy by no means must be left out: they and their Plot are quite confounded; and it would do one good to see how down in the mouth they are. And I believe there is never a clergyman hath any good thought from sir Samuel Barnardiston, except Mr. Kidder* for his balsamic temper, forsooth: because he took him for a trimmer, he must be courted to come to Ipswich; and all men of his temper must be sure to be taken care of, and be brought in to support the honest party, as he calls them. I take notice of this, because sir George is not yet 'so down in the mouth,'† but he can tell sir Samuel Barnardiston his mind.

Mr. *Williams.* My lord, I have in my hand my copy of the Information; and that is as I opened it.

L. C. J. Here is the original, man, and that is right, what dost tell us of thy copy? If thy copy be wrong, how can we help that?

Mr. *Williams.* But, my lord, I hope you will hear what we have to say in this matter. Here is an abuse put upon the court, as well as upon the defendant. For here has been a rasure in the Information.‡

L. C. J. We know nothing of that; the record before us upon the roll is right.

Mr. *Williams.* That Information, which we pleaded to, was as I opened.

L. C. J. Ay; but, good Lord! what are we doing now? Is not here a record of a conviction before us, upon which we are to go?

Mr. *Williams.* My lord, that which we offer in arrest of judgment, or for a new trial, is this, we have been ensnared into this trial, upon the account of this mistake, which we depended upon. They now have altered the record from the roll that we pleaded to: we pray, that it may be examined, how it was upon the roll at the time of the plea pleaded.

Att. Gen. Mr. Williams is far out of the way, as to the fact

L. C. J. Mr. Attorney, I have often heard

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* Richard Kidder was shortly after the Revolution made bishop of Bath and Wells, in the place of Ken (one of the seven) who had been deprived.

† See the Letters which were read in the Trial, p. 1354.

‡ Amendments of two Informations, for publishing seditious, scandalous, obscene, and impious libels, which amendments were made by a single judge (hearing both sides, but not having consent on the part of the defendant,) at his chambers, after the records were made up and sealed, and on the day before the trials, were held to be regular. The amendments were by striking out the word "purport," wherever it occurred, and substituting the word "tenor." The statute power of amending, extends not to Criminal proceedings; but as to Common-Law amendments, there is no difference between Civil Proceedings, and Criminal Informations. But an indictment cannot be amended. See in this Collection the case of John Wilkes, A. D. 1770. See, too, for the History of Amendments, Blackst. Comm. Book 3, c. 25, s. 3.

say, 'Blessed is the mending hand:' It may be, we will punish the power that did it, when that comes fairly before us; but we find it right now upon the record, and that is all we look for now. Therefore I say, first let Judgment be entered, and affirmed; for as to any thing we see, it is a very good Information; but if you have any motion to make for the examination of any irregularities of the clerk, or any body else, come prepared for it, and we will hear you, and do as we see just, and punish offenders. Or if you be particularly grieved, you know your remedy, bring your action against the party that has done you the wrong, and, by the grace of God, we will do our duty.

Just. *Withins.* Ay, in God's name do so.

L. C. J. But I never knew in my whole life, if ever a record were mended to make it good, that we ever allowed, I mean the court, an allegation at the bar to alter it, to make the exception good. I have often heard it said here, 'We will alter a record, perhaps, to make good a judgment,' but never to make it erroneous.

Mr. *Williams.* But, my lord, we hope this abuse shall not go unminded. I know you will not pass over such a thing, as the razure of a record, after plea pleaded.

Att. Gen. No doubt, they will not.

Mr. *Williams.* We will make it out, and pray it may be examined.

Att. Gen. This could do nothing in the world to alter the fact upon the trial.

L. C. J. Let us proceed upon the record, and the matter now before us.

Just. *Withins.* Ay, for we have two hares a foot; let us dispatch one first.

L. C. J. I will tell you, for the first matter alledged in arrest of Judgment, out of the Letters themselves, I plainly perceive it was very prudently avoided, what Mr. Attorney desired, Mr. Williams would not write his exceptions, because he had none to write.

Att. Gen. He spoke the truth, he could not. Indeed I expected something else.

L. C. J. Well, it was well avoided though, where nothing else could be said.

Att. Gen. The court is pleased to affirm Judgment.

L. C. J. Yes, for we see no cause offered to the contrary.

Att. Gen. I desire then, for the king, that a fine may be set upon sir Samuel Barnardiston, and that proportionable to the offence; for these are matters that come very near to treason.

Sol. Gen. Mr. Williams says he was asleep.

Mr. *Williams.* He says himself he was in a dream, Mr. Solicitor.

Sol. Gen. Then I hope the court will awaken him with a good fine.

L. C. J. There are a generation of men, that gather from and send to all parts of the kingdom all the falsities they can get, to defame the government; and spread them up and down. There is an itch of factious news, that must be scratched, and lies must be spread every where to do the work. We never met with so pat an example, as the person now before us. You see how industrious he has been to lick up all the venom imaginable against the government, to stuff his Letters to his factious correspondents with; which if we do not now take care to punish such offences, in a little time we shall see very bad effects of it. We know, and feel it every day, the infection is dispersed into several parts of the kingdom; but we must prevent its spreading further, if we can: sir Samuel Barnardiston could not let his mind be told in a single letter, but four or five of the same nature must be writ, to scandalize the king, as if he were satisfied my lord Russell was innocent. And as he is pleased to reflect basely upon the king's witnesses, so he doth commend all the traitors: he doth declare positively against the justice of the nation, in affirming their innocence, and that there was no Plot but a sham Protestant Plot; at least he did what he could to suppress the belief, and discourage, it may be, the further discovery of it.

Mr. *Williams.* My lord, I have only one word to offer on behalf of sir Samuel Barnardiston, before you pronounce your Judgment. Whatever other persons have done, or whatever has happened since, I hope shall not affect this gentleman.

L. C. J. No, no; it never has any influence in courts of justice. Every man must suffer for his own fault; but where the crime is catching, a severe punishment of one may prevent the other.

Just. *Withins.* I think there is no need of aggravation; the offence is so great, I scarce know any punishment by our law big enough for it.

Sol. Gen. Only I would desire the court to observe one thing out of that sweetening letter, as Mr. Williams calls it, that is to qualify and cure all the other matters. He says 'the contrary party have prevailed, which much dasheth our hopes.' If sir Samuel were so innocent and harmless, as Mr. Williams would have him to be, I would fain know who this contrary party is, and what party sir Samuel Barnardiston is of.

L. C. J. Of colonel Sidney's party: he tells you so in his Letter.

Mr. *Williams.* I think sir Samuel Barnardiston doth not intend to write comments upon his Letters.

L. C. J. No, he need not; the text, I can assure you, is bad enough. It is a pretty thing, that a man should make so light of such a devilish horrid conspiracy; such a damnable contrivance to murder the king, and to massacre the king's best subjects, as appears by all the evidence, that has been given of this Plot. And that he should rail at, and revile the government, and all its friends; it is, I say, a very pretty thing, and shews, sir Samuel Barnardiston values the life of his prince, and the preservation of the government and the public peace, much. There is no man, that has a

heart such as a subject ought to have, but trembles at the very remembrance of such things, as were designed in that damnable conspiracy; and yet forsooth, it must be a May-game, and a politic fiction; now the Protestant Plot is lost here, and only to be found among abhorrers and addressers. These dangerous attempts upon the life of the king, and the duke, are things to be drolled about, and tossed up and down. Any man that has any bowels about him, such as a subject ought to have for his prince, or any loyalty, must tremble at the thoughts of it!

[Then the Judges consulted together.]

Just. *Withins.* Where is sir Samuel Barnardiston?

L. C. J. There he is, (pointing to him, who stood in the Court.)

Just. *Withins.* Sir Samuel Barnardiston, Here has been an Information exhibited against you in this court, by Mr. Attorney General, on the behalf of the king, for writing four scandalous Letters. You have pleaded Not Guilty to it, and the jury have found you Guilty of writing them all four; and they have found likewise, that you did this seditiously, with an intention to raise discord between the king and his people; and likewise between the king's people among one another. This the jury have found upon your trial. The matter of the libels is considerable in this case as to the judgment that must be given; what they relate to, and whom they concern. First, as to whom they concern; First, it concerns the king in his own particular actings, traduceth him, that notwithstanding he believed persons were innocent, yet he suffered them to be executed; Though he were satisfied by the duke of Monmouth that there was nothing in it, yet by the insinuation of some persons, he signed the warrant for executing innocent men. Thus far it reflects upon the king in his own person; that he knowingly destroyed innocent persons, and took away their blood. Secondly, it concerns the justice of the nation, and that not only in part, but in the whole; as to the several trials, that all amounted but to a Sham Plot, a thing counterfeited, and that had nothing of truth in it. Now that men should be tried for their lives and convicted before all the judges of England, as my lord Russell was, at the Old Bailey, and a long and fair trial it was, a trial that has born the test of printing, and I never heard that any body could justly find any fault in it, that any thing was said, that was not printed, or that the evidence was not extraordinary strong; and yet this must be all a sham, and after this, he must be bewailed afresh, and the duke of Monmouth must be heard to say, he was as loyal a subject as any the king had. What is this, but to fall foul upon the justice of the nation? that such things should be done in the courts of justice, in England, to sham people out of their lives. In the next place, there is colonel Sidney's trial, which was had openly here in this court, where he had all the liberty he could desire to defend himself; [illegible], and yet all this will not satisfy some people of the reality of the thing; nothing will serve, but that this is all a Sham Plot. And among the rest, sir Samuel Barnardiston it seems is one of these people. What must such people be? Mr. Williams tells us, he is a person free from having any sedition in him; but yet it was well observed out of his own letter, by the king's counsel, that he has herded himself among a party. He tells his friends, the contrary party have prevailed with the king to sign the warrant for Sidney's Execution. This shews him to be one of the other party; nay, further, he adds, which very much troubleth us——

Sol. Gen. 'Which much dasheth our hopes.'

Just. *Withins.* Ay, I cry you mercy, 'dasheth our hopes.' Now, what were these hopes, I pray? That he should be preserved, being a guilty person, or being an innocent person? Be it which it will, it was a hope not becoming him. If he were guilty and should be executed, then he owns, it is not such guilt for which he ought to die, though it were the highest treason against the king, and the government. If he thought him Not Guilty, then it is a falling foul upon the witnesses, the jury, all the judges here, and the public justice of the nation. Nay, this does not suffice, nor serve your turn, sir Samuel Barnardiston; You must have a fling at all the gentlemen of all parties of England. I mean those concerned in the addresses, and abhorrences, which you cannot but take notice, they are a great many for number, and of great estates and interest in their countries; and perhaps their giving their public testimony of their loyalty, and joy for the king's safety, doth very much dash your hopes likewise; and that makes you fall foul upon them; that the Plot is lost here, and not to be found but among them. So that you are not contented to fall upon the king, and the judges, and the justice of the nation; but upon all the king's friends, and faithfullest subjects. The matter of those addresses being congratulations for the preservation of the life of the king, and the life of the duke his only brother, and of the government; this must be only to support the credit and belief of a Sham Plot. Thus ill you use your king, his judges, and courts, all his friends, and gentlemen of the best quality in the kingdom. I cannot but admire truly, sir Samuel Barnardiston, that a person of your great concerns in the world, should no more consider those things; that one of your estate, knowledge, and quality should not more value the peace and quiet you enjoy under so good and gracious a prince, and so excellent a government, where you enjoy all the liberty that is lawful for honest men to have. I am sorry to see you of such a unquiet spirit, that you should give up yourself to such a strange way of acting and writing and speaking as you have done. But our business is to inflict a punishment upon you for this great offence, and therefore,

"It is the opinion of the Court (and that is "the Judgment which I must deliver) that you "pay to the king a Fine of TEN THOUSAND "POUNDS*, that you find sureties for your good "behaviour during your life; and be com- "mitted till all this be done"

L. C. J. Take him into custody [Which was done accordingly.]

* In the 'Display of Tyranny,' as quoted in a Note to lady Russell's Letters to Dr Fitzwilliams, dated January 31, 1684-5, (Lady Russell's Letters, p. 290, ed. of 1792) it appears, that during the imprisonment of sir Samuel Barnardiston on account of this Fine, great waste and destruction was made on his estate. "June 1688 Sir Samuel Barnadiston, who hath lain some time in the King's Bench, is at liberty, the king having been pleased to remit his Fine; or rather he hath paid 6,000*l* and given bond for the residue." Narcissus Luttrell's MS Brief Historical Relation, &c.

As to excessive Fines, see the "Declaration of Rights," 5 Cobbett's Parl Hist 109, 110 See, too, the Bill of Rights, 1 W and M Stat 2, Cap 2.

END OF VOL IX

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